

FARGO CITY COMMISSION AGENDA
Monday, March 7, 2022 - 5:00 p.m.

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at www.FargoND.gov/streaming. They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at www.FargoND.gov/citycommission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, February 22, 2022 and Special Meeting, February 24, 2022).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 1st reading of an Ordinance Relating to Term Limits for City Commission Members.
- 2. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Ohmer's Addition; 1st reading, 2/22/22.
- 3. Findings, Conclusions and Order of the Board of City Commissioners of the City of Fargo regarding the License Violation of Northstar Hospitality, LLC d/b/a/ SouthTown PourHouse.
- 4. Settlement Agreement and Release with James J. and Joyce D. Lepine.
- 5. Recommendation for Denial of Application of Abatement or Refund of Taxes on 3501 12th Avenue North and retain the 2021 value (Hearing waived by applicant).
- 6. Applications for Games of Chance:
 - a. St. Joseph's School for a raffle on 3/19/22.
 - b. North Dakota State University Saddle and Sirloin for a raffle board on 4/13/22.
 - c. NDSU Sigma Alpha Professional Agricultural Sorority for a raffle on 3/26/22.
- 7. Amendment No. 2 with Houston Engineering for Project No. FM-14-71.
- 8. Milestone No. 5 Time Extension (Change Order No. 10) with Key Contracting for Project No. FM-16-A1.
- 9. Memorandum of Offer to Landowner for Easement (Temporary Construction Easement), Permanent Easement (Storm Sewer) and Permanent Easement (Levee and Retaining Wall for Flood Control) with Mary Bjerke (Project No. FM-19-C).
- 10. Bid award to Roadway Services, Inc. for Project No. PR-22-A1.
- 11. Bid advertisements for Project Nos. SR-22-B, UR-21-B and TP-21-B.
- 12. Fire Department Grant Acceptance from the ND Department of Emergency Services for Change of Scope for Remaining Funds.

- Page 2
13. State Water Commission Cost reimbursement for the FM Metropolitan Area Flood Risk Management Project in the amount of \$2,753,630.08.
 14. Bid award for the 2022 forestry related contracted services (RFP22004).
 15. Notice of Grant Award with the ND Department of Health for the Ryan White Part B Program (CFDA #93.917).
 16. Grant Award Amendment from AIDS United.
 17. Proposals from Braun Intertec for geotechnical consulting, special inspecting and testing services for the Civic Center Parking Ramp vertical expansion.
 18. Application for Appropriation from Civil Asset Forfeiture Fund to purchase a police K-9 and provide handler training.
 19. Addendums to Fugitive Task Force Memorandum of Understanding between the Fargo Police Department, US Marshal's Service and Drug Enforcement Administration pertaining to Body Worn Cameras.
 20. One year contract extension with Q3 Contracting Inc. for concrete utility cut repairs (RFP19018).
 21. Exercising the option to piggyback on the Minnesota State Bids Contract to purchase one M20 Sweeper/Scrubber from Tennant Sales and Service Company (PBC186080).
 22. Addendum to Purchase Agreement with James P. Sabo for property located at 2414 7th Avenue North.
 23. Resolution Authorizing Sale of Property at 1123 9th Avenue South.
 24. Task Order No. WA08 with Apex Engineering Group to complete Final Design and Bidding for Filtration Improvements at the 1997 Lime Softening Water Treatment Plant.
 25. Work Change Order No. 2 under Contract No. 1 (General Construction) for Project WA1863.
 26. Sole Source Procurement with Tech Sales, Inc. to purchase instruments, parts and services for the Water Utility (SSP22042).
 27. Electrical Services Agreement with Sun Electric Inc. for the Water Utility.
 28. Bills.
 29. Negative Final Balancing Change Order No. 6 for Improvement District No. BN-20-L1.
 30. Bid awards for Improvement District Nos. PR-22-E1 and PR-22-G1.

REGULAR AGENDA:

31. **RESIDENT COMMENTS** (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).

***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**

32.
 - a. Golden Valley Sixth Addition (2800 67th Avenue South); approval recommended by the Planning Commission on 11/2/21:
 1. Zoning Change from AG, Agricultural to SR-4, Single-Dwelling Residential.
 2. 1st reading of rezoning Ordinance.
 3. Plat of Golden Valley Sixth Addition.
 - b. Special Assessments for Sewer Repairs.
 - c. Renewal Plan and Development Agreement for Tax Increment Financing District No. 2021-04 (1418 1st Avenue North).
33. Recommendation for approval of the Veterans Boulevard Corridor Extension Study.
34. Commissioner Gehrig would like a presentation of clinical studies that show masking stops the spread of COVID-19, especially in children at schools.
35. Annual review of F-M Ambulance Inc. d/b/a Sanford Ambulance-Fargo.
36. Report on the Firearms ruling.
37. Appointments to the Fargo Police Advisory and Oversight Board.
38. Appointments to the Native American Commission.
39. Applications for Property Tax Exemptions for Improvements Made to Buildings:
 - a. Megan Zander, 334 15th Avenue South (5 years).
 - b. Julie Huebner, 2823 1st Street North (5 years).
40. Set 7:30 a.m., Tuesday, April 12, 2022, as the date for the Board of Equalization to meet.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310 at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1

AN ORDINANCE REPEALING SECTION 2-0106 OF
ARTICLE 2-01 OF CHAPTER 2 OF THE FARGO
MUNICIPAL CODE RELATING TO TERM LIMITS FOR CITY
COMMISSION MEMBERS

WHEREAS, the Board of City Commissioners desires to place the question of city commission term limits before the city electorate at the June 14, 2022, city election; and,

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to repeal the City's existing term limits ordinance, Section 2-0106 of the Fargo Municipal Code, so that the city electorate is then allowed to vote whether or not to approve a proposed term limits ordinance; and,

WHEREAS, it is further the desire of the Board of City Commissioners that the proposed new term limits ordinance to be voted upon by the city electorate is to apply to existing, seated members of the Board and, therefore, that said repeal take effect immediately prior to the date that the proposed new term limits ordinance will take effect, without any interruption in the succession of terms of any of the existing, seated members; and,

WHEREAS, according to Section 1-0210 of the Fargo Municipal Code, the City's procedure for passing ordinances by city electorate, if there are a majority of "yes" votes of those members of the city electorate voting on the matter, the new term limits ordinance shall become effective ten days after the election results are certified, and, therefore, it is the desire of the Board of City Commissioners that this repeal become effective immediately prior to the tenth day after the election results are certified;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Repeal.

Section 2-0106 of Article 2-01 of Chapter 2 of the Fargo Municipal Code is hereby repealed in its entirety.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Effective Date. This ordinance shall be in full force and effect upon the expiration of the ninth day after the results of the June 2022 city election are certified.

Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

2

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN OHMER'S ADDITION TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Ohmer's Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on January 4, 2022; and,

WHEREAS, the rezoning changes were approved by the City Commission on February 22, 2022,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following-described property:

Block Four (4) of Ohmer's Addition to the city of Fargo, Cass County, North Dakota, is hereby rezoned from "SR-2", Single-Dwelling Residential, District and "MR-2", Multi-Dwelling Residential, District, to "P/I", Public and Institutional, District, with a "C-O", Conditional Overlay, District as follows:

- 1) The following use(s) are allowed:
 - a. Colleges;
 - b. Community Service;
 - c. Daycare Centers of unlimited size;
 - d. Health Care Facilities;
 - e. Parks and Open Space;
 - f. Religious Institutions;
 - g. Safety Services;
 - h. Schools; and
 - i. Outdoor Recreation and Entertainment.

All other uses are prohibited.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 2) For the purposes of evaluating the maximum sign face area of an electronic messaging center, Broadway North will be considered a local street.

Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

Section 3. This ordinance shall be in full force and effect from and after its passage and approval.

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

CITY ATTORNEY
Nancy J. Morris

ASSISTANT CITY ATTORNEYS
Ian R. McLean ▪ Alissa R. Farol ▪ William B. Wischer

March 3, 2022

③

Board of City Commissioners
City Hall
225 Fourth Street North
Fargo, ND 58102

Re: Northstar Hospitality, LLC d/b/a Southtown Pourhouse Audit Violation

Dear Mayor and Commissioners,

Presented for your approval are the Findings, Conclusions and Order of the Board of City Commissioners of the city of Fargo regarding the License Violation of Northstar Hospitality, LLC d/b/a Southtown Pourhouse. These Findings were prepared following the full hearing by the Board of City Commissioners on February 24, 2022, and in conformance with the motion finding Northstar Hospitality, LLC d/b/a Southtown Pourhouse in violation of Fargo Municipal Code §25-1506 (J).

Recommended Motion: I move to adopt the Findings, Conclusions and Order of the Board of City Commissioners of the city of Fargo as presented, and authorize the Mayor to execute the same.

Please feel free to contact me if you have any questions, comments or concerns.

Regards,



Nancy J. Morris

Cc: Steven Sprague, City Auditor

**Findings, Conclusions and Order of the Board of City Commissioners of the
city of Fargo regarding the License Violation of Northstar Hospitality, LLC
d/b/a Southtown Pourhouse**

A hearing was held before the Board of City Commissioners of the city of Fargo on February 24, 2022 regarding the Class FA liquor license held by Northstar Hospitality, LLC d/b/a/ Southtown Pourhouse ("Southtown") following appeal to, and remand from, the District Court requiring a hearing be held, and an initial determination made, in accordance with Fargo Municipal Code §25-1512(G).

Steve Sprague, City Auditor, presented the factual basis to the Board of City Commissioners recommending a finding of an audit violation in accordance with Fargo Municipal Code §25-1512 (F). The Board of Commissioners heard the testimony offered by attorney Tim O'Keeffe, appearing on behalf of Southtown, and Chad Klimek, President of Northstar Hospitality, LLC. At the request of the licensee, prior City Commission minutes, documents submitted to the City Commission and transcripts of Commission hearings shall be made part of the record hereof. In addition, the Board of City Commissioners further considered the current submitted documents, copies of which are attached.

The Board of City Commissioners hereby makes the following Findings of Fact, Conclusions and Order in accordance with Fargo Municipal Code §25-1512(G).

1. On May 21, 2018, Southtown was granted a Class FA liquor license, as defined in Fargo Municipal Code § 25-1506(J):

J. Class FA.—A Class "FA" license shall authorize the licensee to sell "on-sale" only, subject to the following restrictions and conditions:

1. A Class "FA" licensee may sell alcoholic beverages in a restaurant which holds a restaurant license or permit pursuant to the provisions of article 13-

04 of the Fargo Municipal Code and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.

2. A Class "FA" license shall authorize the licensee to sell "on-sale" only and no licensee hereunder may conduct any "off-sale" liquor sales.

3. A restaurant under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the Fargo Park'N Shop program may be considered as compliance with this provision.

4. A restaurant shall mean an establishment providing multi-course meals of steak, fish, seafood and other similarly menued main courses, as well as hors d'oeuvres and desserts. Main course menu items shall be fully prepared and cooked on the premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for fast or convenient service. The hours within which sales of alcoholic beverages may be made shall coincide with the hours permitted by the state of North Dakota for the sale of alcoholic beverages and shall also be additionally limited as set forth herein. When the kitchen is not in full operation and a full menu service is not being offered to patrons, the sale and consumption of alcoholic beverages shall be discontinued within one hour after the cessation of full kitchen operation and the offering of a full menu service. It is the intention of this restriction that the purpose of an "FA" license is to allow the sale of alcoholic beverages as an adjunct to the restaurant operation and not that of operating a full-time liquor establishment. A recipient of an "FA" license shall provide a full and complete kitchen adequate for the preparation of food as required by this ordinance. Such kitchen shall be subject to approval by the commission.

5. In addition to the foregoing, the Class "FA" license shall be governed by all the provisions of this article applicable to Class "A" licensees and in addition, said licensee shall hold a restaurant license or permit pursuant to article 13-04 of the Fargo Municipal Code relating to restaurants.

6. As part of the licensee's obligation that the licensee derive fifty (50%) or more of its annual gross receipts from the sale of prepared meals than from the sale of alcoholic beverages, as discussed in section 25-1504.2, the licensee shall retain and keep appropriate business records concerning purchase of food and alcoholic beverages and sales receipts for food and alcoholic beverages. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).

2. A complaint was made to the City Auditor in early April 2019 regarding the business practices of Southtown. In particular, the complainant questioned the use of Duane's

House of Pizza, Inc. (“Duane’s”) pizza sales by Southtown in its food sales calculations to accomplish the 50% food sales requirement of the FA License category. At that time it was determined that the percentage food sales was an audit matter and that the issue would be flagged in the annual audit for further inquiry.

3. In accordance with Fargo Municipal Code §25-1512(F) Southtown was subject to audit in the first year of operation:

F. For those businesses with liquor licenses requiring a food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio), there shall be an audit at least once every three (3) years (one-third of the licensees each year) provided, however, that subject businesses obtaining a new license and businesses that transfer an existing license to new owners shall be subject to an audit 12 months after obtaining or transferring of the license.

4. On February 25, 2020, the audit completed by Brady, Martz and Associates, P.C. (“Brady Martz”), reflected a food to alcohol sales ratio of 53% food/47% alcohol. The food sales information provided by Southtown to Brady Martz specifically identified Duane’s pizza sales separate from other food sales. Brady Martz was asked to evaluate the Southtown food/alcohol sales ratio excluding the Duane’s pizza sales. The result was a sales ratio of 42% food/58% alcohol. The result of less than 50% food sales as required by the FA license terms prompted further investigation.

5. After the audit, the City Auditor inquired of Southtown owner Chad Klimek as to the relationship between Southtown and Duane’s. In response, Klimek provided a copy of a Product Sales and Facility Use Agreement between Northstar Hospitality, LLC and Duane’s House of Pizza, Inc (“Agreement”). This Agreement provides, in part:

¶5 Facility Use. The Premises includes two kitchen facilities: one for the exclusive use by Duane’s and the other for the use by Northstar in its food operations. Duane’s shall be entitled to the exclusive use of its dedicated kitchen facilities within the

Premises for Duane's operations. Duane's shall be deemed to lease said kitchen facilities during the term of this Agreement.

Product Sales and Facility Use Agreement, dated July 30, 2018 between Duane's House of Pizza, Inc. and Northstar Hospitality, LLC (emphasis added).

6. This Agreement further outlines the lease compensation terms between the two parties. Specifically, paragraph 6 provides: (1) Duane's is obligated to pay a monthly rent for the use of the separate kitchen space; and (2) Northstar shall compensate Duane's for 90% of the retail price of the pizza served on the Southtown premises. Duane's is responsible for determining the retail price of the pizza on the Southtown menu. Duane's sells the pizza to Southtown at a discount, and then Southtown sells them to its customers at the price set by Duane's. The discount is part of the compensation (lease payment) Duane's pays for the use of the premises, as detailed in paragraph 6 of the Agreement.

7. The Agreement further provides that Duane's is responsible for the sales tax on all pizza's sold.

8. The Agreement provides that if the customer is not satisfied with the pizza, Duane's is responsible for addressing the customer complaint "in the form of Duane's gift cards, credit vouchers or the like, in the sole discretion of Duane's." Southtown has no responsibility for (1) the purchase of the ingredients for the pizza, (2) Duane's pizza employees, or (3) the quality of the Pizza.

9. The Agreement, at paragraph 6(e) provides that "Northstar shall pay Duane's on a weekly basis. Within seven (7) days of Northstar receiving the Sunday reconciliation for Pizzas sold from Duane's." Thus, Duane's sells the pizza to Southtown, which then sells it to the end customer on Southtown's premises. Pursuant to the Agreement, Duane's includes the pizza sales in its sales figures, and is obligated to pay the sales taxes on those pizza sales. If permitted to

count the pizza sales in its food sales, Southtown would be double counting the pizza sold by Duane's.

10. Chris Ohman, Department of Public Health, provided testimony that "in their (Public Health's) restaurant inspections, they (Duane's and Southtown) are two separate businesses with separate plan, separate owners, separate coolers. They have always been two separate businesses."

11. Jeff Thomas, Owner of Frank's Lounge, provided testimony that the including of food sales from a separate business is not consistent with his understanding of the license terms. He secured a Z license in order to avoid the 50% food sales requirement of an FA license. The Z license would be unnecessary if food sales from a separate business could be used to meet the FA license requirement. Further, the value of the Z license would be diluted if another business' food sales were able to be counted in the food sales requirement for the FA restaurant license.

12. Counsel Tim O'Keeffe admitted that Southtown and Duane's are separate businesses, but argued that the pizza sales are run through the Southtown point of sale system when ordered by a Southtown guest for consumption on Southtown's premises, and that Chad Klimek believed this arrangement was approved by the City Auditor at the time the license application was made. The City Auditor disagrees with Southtown's characterization of discussions had during the license application process. Southtown also asserts that it sells a significant amount of food made in its own kitchen, but admits that it likely would not make the required food to alcohol ratio if it did not include the Duane's pizza sales in its calculation of food sold.

CONCLUSIONS AND ORDER

After hearing and discussion, the Board of City Commissioners voted unanimously to find that the pizza sales from Duane's House of Pizza, Inc, a separate and distinct business from that of the licensee Northstar Hospitality, LLC, d/b/a Southtown Pourhouse, are not food sales of the FA licensee. The pizza made and delivered by Duane's are food sales of Duane's, not Southtown Pourhouse.

To include the food sales of other businesses in the food to alcohol ratio of the licensed business is inconsistent with the terms of the FA license, and in particular the requirement that (1) the "licensed restaurant" maintain a full kitchen; (2) may not serve prepackaged or prepared foods; and (3) must maintain records of food acquired and sold, as stated in Fargo Municipal Code § 25-1506 (J) (4), (5) and (6) (emphasis added):

A recipient of an "FA" license shall provide a full and complete kitchen adequate for the preparation of food as required by this ordinance. Such kitchen shall be subject to approval by the commission.

The Board of City Commissioners finds that the food prepared in a separate kitchen, by a separate business, was not contemplated nor intended by the issuance of an alcohol license to a restaurant.

Main course menu items shall be fully prepared and cooked on the premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for fast or convenient service.

The Board of City Commissioners finds that the pizza made by Duane's and sold to Southtown for re-sale is made in space leased by Duane's from Northstar Hospitality, LLC. Although the two kitchens are in close proximity, Duane's is a tenant of Northstar Hospitality, LLC, and the Duane's pizza is not made in the Southtown Pourhouse kitchen, but in a separate

restaurant, licensed and inspected as such by the Department of Health, by Duane's Pizza employees.

[T]he licensee shall retain and keep appropriate business records concerning purchase of food and alcoholic beverages and sales receipts for food and alcoholic beverages. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages.

The Board of City Commissioners finds that inclusion of the pizza sales made and delivered by a separate business to the licensed premises does not meet the record keeping requirements for the purchase of food and alcohol, and sales receipts for the same food and alcohol, such records being necessary to determine whether or not more food than alcohol is sold. Southtown Pourhouse has repeatedly suggested that it sells a significant amount of food made in its own kitchen to prove that it is in fact a restaurant. Nevertheless, Southtown Pourhouse is not permitted to use the sales of food made by a separate and distinct business, made with ingredients purchased by that separate business, in order to meet the required food to alcohol sales ratio of the Class FA license under which Southtown operates.

Based on the foregoing Findings of Facts and Conclusions, the Board of City Commissioners has determined that the sales receipts of Duane's House of Pizza, Inc. pizza are not properly included in the food sales for liquor license holder Northstar Hospitality, LLC d/b/a Southtown Pourhouse. Therefore, Northstar Hospitality, LLC. d/b/a Southtown Pourhouse failed to meet the required food to alcohol ratio required by the Class FA license.

It is hereby **ORDERED** that Northstar Hospitality, LLC d/b/a Southtown Pourhouse is in violation of the terms of the Class FA License for failing to meet the food sales requirement, and

further that this be considered a first violation. The penalty for the failed audit shall be in accordance with Fargo Municipal Code § 25-1512 (F):

1. First Offense- six month probationary period to come into compliance to be followed by a second audit establishing compliance. Sale and consumption of alcoholic beverages shall be discontinued at 1:00 a.m. for such time as the length of any probationary period. Yearly audits for the next two years to be paid for by the liquor licensee.

DATED this ____ day of March, 2022.

BOARD of CITY COMMISSIONERS of the CITY
OF FARGO, a North Dakota Municipal Corporation

By _____
Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor



**OFFICE OF THE
CITY ATTORNEY**

CITY ATTORNEY
Nancy J. Morris

SERKLAND LAW FIRM

10 Roberts Street North

P.O. Box 6017

Fargo, ND 58108

Phone: 701.232.8957 | Fax: 701.237.4049

ASSISTANT CITY ATTORNEYS

Ian R. McLean • Allssa R. Farol • William B. Wlscher

February 24, 2022

Board of City Commissioners
City Hall
225 4th Street North
Fargo, ND 58102

Re: Southtown Pourhouse Audit Violation

Dear Commissioners,

Before you today is the hearing on Remand from the District Court regarding the earlier finding by this Commission that Northstar Hospitality, LLC d/b/a SouthTown Pourhouse failed to meet the required 50% food sales for the FA liquor license, in that the Duane's House of Pizza, Inc. pizza sales are not properly included in the food sales ratio. The licensee appealed that decision, arguing that the finding was arbitrary and capricious, and further that it was denied a full hearing on the matter before the Board of City Commissioners. The District Court remanded the case for rehearing, finding that the Board of City Commissioners should have heard the issue in the first instance, rather than on appeal from the Liquor Control Board. Nevertheless, the evidence presented in the earlier proceedings continues to be relevant.

Therefore, for your consideration at today's hearing is my memo dated May 12, 2020, presented to the Liquor Control Board and the Board of City Commissioners, accompanied by the Product Sales and Facility Use Agreement. Also presented are the earlier Findings, Conclusion and Order of the Board of City Commissioners of the city of Fargo regarding the License Violation of Northstar Hospitality, LLC d/b/a Southtown Pourhouse, and the Order Remanding for Hearing Before City Commission.

City Auditor Steven Sprague will present the matter to the Board of City Commissioners for a full hearing with a recommendation for a finding that Northstar Hospitality, LLC d/b/a Southtown Pourhouse is in violation of the terms of the Class FA License for failing to meet the food sales requirements, and further that this be considered a first violation.

Please feel free to contact me if you have any questions, comments or concerns.

Regards,

Nancy J. Morris

STATE OF NORTH DAKOTA
COUNTY OF CASS

IN DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT

Northstar Hospitality, LLC, d/b/a SouthTown
PourHouse,

Appellant,

vs.

Board of City Commissioners, City of Fargo,
North Dakota,

Appellee.

**ORDER REMANDING FOR HEARING
BEFORE CITY COMMISSION**

File No. 09-2020-CV-02871

[¶1] Northstar Hospitality, LLC ("Northstar"), appealed from a Board of City Commissioners of the city of Fargo ("City Commission") decision upholding a Liquor Control Board determination that Northstar had violated its liquor license. The Liquor Control Board had determined that Northstar violated the required food-to-alcohol sales ratio for a Class FA license. Because the City Commission treated the proceeding before it as an appeal from the Liquor Control Board, instead of as an initial hearing in accordance with Fargo Municipal Code § 25-1512(G), the matter is remanded for hearing before the City Commission.

I

[¶2] On May 20, 2020, the Liquor Control Board held a hearing regarding Northstar's alleged violation of its liquor license. (COF 7-10.) A Northstar representative, an attorney representing Northstar, and two City Commission members, who were also members of the Liquor Control Board, attended. (COF 7.) At issue was whether Northstar violated its Class FA license by failing to derive 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages. (COF 9-10.) At the end of the hearing, the Liquor Control Board

determined that Northstar had violated its license. (COF 10.) Northstar was advised it had a right to appeal the decision to the City Commission. (COF 10.)

[¶3] Northstar appealed to the City Commission. (COF 24.) For its July 27, 2020 meeting, the City Commission included an agenda item to “[c]onsider an appeal of the Liquor Control Board[.]’s 5/20/20 findings of a violation of Fargo Municipal Code 25-1512(F) by Northstar[.]” (COF 3.) When the July 27, 2020, meeting took place, the City Commission recognized the matter as an appeal from the Liquor Control Board finding of a violation by Northstar. (COF 55:15-18.) Multiple persons made remarks and arguments, including two attorneys, the city auditor, and a business owner. (COF 64:3-7.) During Northstar’s attorney’s remarks, the City Commission requested that the attorney “come to [his] summation” and alluded to the attorney going well beyond the “usual[.]” five-minute speaking period. (COF 64:3-7.) No one was sworn in. (COF 55-79.) No documents were received. (COF 55-79.) At the end of the hearing, the City Commission upheld the finding of the Liquor Control Board. (COF 74:4-5-79:2.)

[¶4] In its written decision issued the next month, the City Commission indicated it had “voted unanimously to deny [Northstar]’s appeal from the Liquor Control Board and uphold the license violation for failing to meet the required 50% food sales.” (COF 108.) The City Commission referenced hearing “the testimony offered by attorney James M. Cailao ... [and] attorney Mark Hanson[.]” (COF 104.) It also “considered the submitted documents, the finding of the Liquor Control Board and documents presented to the Liquor Control Board.” (COF 104.)

[¶5] Northstar appealed to this Court. One of Northstar’s arguments was that it was not afforded an opportunity to present testimony and other evidence to the City Commission. (Appellant’s Brief ¶ 32.) Through briefs, each party indicated the initial determination was made by the Liquor Control Board and the City Commission had denied Northstar’s appeal. (Appellant’s Brief ¶ 11; Appellee’s Brief ¶¶ 1, 10-13.)

II

[¶6] Review of a political subdivision's decision is very limited. See Johnson City of Burlington, 2020 ND 81, ¶ 9, 942 N.W.2d. The decision must be affirmed unless the political subdivision acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Id. A political subdivision's interpretation and application of ordinances, though, is subject to full review. City of Fargo v. Ness, 551 N.W.2d 790, 792 (N.D. 1996). The failure of a political subdivision to correctly interpret and apply controlling law constitutes arbitrary, capricious, or unreasonable conduct." Id.

III

[¶7] The Fargo Municipal Code provides a specific process for Class FA licensees to challenge imposition of a sanction for violation of the required food-to-alcohol sales ratio. Sanctions for those violations are set out in Fargo Municipal Code § 25-1512(F). The process for challenging an alleged violation is set out in the next subsection, Fargo Municipal Code § 25-1512(G) (governing "[s]anctions or penalties under subsections E and F"). The hearing "shall be heard by the board of city commissioners." Fargo Municipal Code § 25-1512(G). At the hearing, if "it appears to the majority of the board of city commissioners that sufficient cause exists for the penalty sanctions," the City Commission shall make its order. Id. The City Commission's order is then appealable to the district court under N.D.C.C. ch. 28-34. Id.

[¶8] In contrast, the process for other types of violations involves a determination by the Liquor Control Board, which is appealable to the City Commission. An example is a licensee's alleged violation for allowing consumption by an intoxicated person. The potential penalties and process for challenging an alleged violation are set out in Fargo Municipal Code § 25-1512(I). Under that subsection, the hearing "shall be heard by the liquor control committee subject to an appeal to the board of city commissioners[.]" Fargo Municipal Code § 25-1512(I). Upon the appeal, "the

licensee shall be allowed to make any statements or arguments and fully argue its case, but it will not be entitled to a trial de novo [...] [and] [t]he hearing shall be based on the findings of fact made by the liquor control committee." Id.

[¶9] In addressing Northstar's alleged violation, the process used was the one set forth in Fargo Municipal Code § 25-1512(I), i.e., having the initial hearing and determination by the Liquor Control Board, which could be appealed to the City Commission. Although the City Commission's order references Fargo Municipal Code § 25-1512(G) and characterizes attorneys' remarks as "testimony" (COF 104), a multitude of factors in the record shows that the proceeding before the City Commission was treated as an appeal. First, the Liquor Control Board made the initial determination that Northstar violated its license requirements. Second, the Liquor Control Board advised Northstar that it could appeal from its decision to the City Commission. Third, the City Commission designated the matter on its agenda as an appeal. Fourth, the City Commission introduced the matter at its meeting as an appeal. Fifth, the City Commission addressed the matter in a manner consistent with an appeal – noting the "usual[]" allotment of five minutes speaking time, requesting that Northstar's attorney get to his "summation," and not receiving evidence. Sixth, the City Commission's order referenced the matter as an appeal – indicating it voted to "deny [Northstar's] appeal from the Liquor Control Board and uphold the license violation. Finally, the matter was recognized before this Court as an appeal stemming from an initial determination by the Liquor Control Board. (Appellee's Brief ¶ 1.)

[¶10] The process followed thus was inconsistent with the applicable law. Under Fargo Municipal Code § 25-1512(G), the City Commission should not have treated the case as an appeal from the Liquor Control Board and instead should have held a hearing for the initial determination on the alleged violation.

IV

[¶11] Because the City Commission did not correctly apply the law, it acted arbitrarily, capriciously, or unreasonably. See City of Fargo v. Ness, 551 N.W.2d 790, 792 (N.D. 1996). The Court remands the matter to the City Commission for hearing and initial determination consistent with Fargo Municipal Code § 25-1512(G).

Dated this 17th day of February, 2021.

BY THE COURT:


Hon. Reid Brady
Judge of District Court



APPROVED BY THE BOARD
OF CITY COMMISSIONERS
8/24/20

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

August 20, 2020

(3)

Board of City Commissioners
City Hall
225 4th Street North
Fargo, ND 58102

COPY

Dear Commissioners,

Please find attached for your review and approval the Proposed Findings, Conclusions and Order in accordance with the Board of City Commissioners' unanimous vote in favor of finding a violation of the liquor license requirements by Northstar Hospitality, LLC d/b/a Southtown Pourhouse.

Suggested Motion: I move to approve the Findings of Fact, Conclusions and Order finding a violation of the food sales requirement of the Class FA license Northstar Hospitality, LLC d/b/a/ Southtown Pourhouse, and that this be a first violation, with the associated penalty.

Please feel free to contact me if you have any questions or concerns.

Regards,

Nancy J. Morris
Assistant City Attorney

Enclosure



Findings, Conclusions and Order of the Board of City Commissioners of the city of Fargo regarding the License Violation of Northstar Hospitality, LLC d/b/a Southtown Pourhouse

A hearing was held before the Board of City Commissioners of the city of Fargo on July 27, 2020 regarding the Class FA liquor license held by Northstar Hospitality, LLC d/b/a Southtown Pourhouse ("Southtown").

Steve Sprague, City Auditor, presented the factual basis to the Board of City Commissioners recommending a finding of an audit violation in accordance with Fargo Municipal Code §25-1512 (F), as concluded by the Liquor Control Board of the city of Fargo on May 20, 2020. The Board of Commissioners heard the testimony offered by attorney James M. Cailao, appearing on behalf of Southtown, attorney Mark Hanson, appearing on behalf of licensee Dave Erickson, and Jeff Thomas, owner of Frank's Lounge. The Board of Commissioners further considered the submitted documents, the finding of the Liquor Control Board and documents presented to the Liquor Control Board.

The Board of City Commissioners hereby makes the following Findings of Fact, Conclusions and Order in accordance with Fargo Municipal Code §25-1512(G).

1. Southtown has been granted a Class FA liquor license, as defined in Fargo Municipal Code § 25-1506(J):

J. Class FA.—A Class "FA" license shall authorize the licensee to sell "on-sale" only, subject to the following restrictions and conditions:

1. A Class "FA" licensee may sell alcoholic beverages in a restaurant which holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.

2. A Class "FA" license shall authorize the licensee to sell "on-sale" only and no licensee hereunder may conduct any "off-sale" liquor sales.

3. A restaurant under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the Fargo Park'N Shop program may be considered as compliance with this provision.

4. A restaurant shall mean an establishment providing multi-course meals of steak, fish, seafood and other similarly menued main courses, as well as hors d'oeuvres and desserts. Main course menu items shall be fully prepared and cooked on the premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for fast or convenient service. The hours within which sales of alcoholic beverages may be made shall coincide with the hours permitted by the state of North Dakota for the sale of alcoholic beverages and shall also be additionally limited as set forth herein. When the kitchen is not in full operation and a full menu service is not being offered to patrons, the sale and consumption of alcoholic beverages shall be discontinued within one hour after the cessation of full kitchen operation and the offering of a full menu service. It is the intention of this restriction that the purpose of an "FA" license is to allow the sale of alcoholic beverages as an adjunct to the restaurant operation and not that of operating a full-time liquor establishment. A recipient of an "FA" license shall provide a full and complete kitchen adequate for the preparation of food as required by this ordinance. Such kitchen shall be subject to approval by the commission.

5. In addition to the foregoing, the Class "FA" license shall be governed by all the provisions of this article applicable to Class "A" licensees and in addition, said licensee shall hold a restaurant license or permit pursuant to article 13-04 of the Fargo Municipal Code relating to restaurants.

6. As part of the licensee's obligation that the licensee derive fifty (50%) or more of its annual gross receipts from the sale of prepared meals than from the sale of alcoholic beverages, as discussed in section 25-1504.2, the licensee shall retain and keep appropriate business records concerning purchase of food and alcoholic beverages and sales receipts for food and alcoholic beverages. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).

2. A complaint was made to the City Auditor in early April 2019 regarding the business practices of Southtown. In particular, the complainant questioned the use of Duane's House of Pizza, Inc. ("Duane's") pizza sales by Southtown in its food sales calculations to

accomplish the 50% food sales requirement of the FA License category. At that time it was determined that the percentage food sales was an audit matter and that the issue would be flagged in the annual audit for further inquiry.

3. In accordance with Fargo Municipal Code §25-1512(F) Southtown was subject to audit in the first year of operation:

F. For those businesses with liquor licenses requiring a food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio), there shall be an audit at least once every three (3) years (one-third of the licensees each year) provided, however, that subject businesses obtaining a new license and businesses that transfer an existing license to new owners shall be subject to an audit 12 months after obtaining or transferring of the license.

4. On February 25, 2020, the audit completed by Brady, Martz and Associates, P.C. ("Brady Martz"), reflected a food to alcohol sales ratio of 53% food/47% alcohol. The food sales information provided by Southtown to Brady Martz specifically identified Duane's pizza sales separate from other food sales. Brady Martz was asked to evaluate the Southtown food/alcohol sales ratio excluding the Duane's pizza sales. The result was a sales ratio of 42% food/58% alcohol. The result of less than 50% food sales as required by the FA license terms prompted further investigation.

5. The City Auditor inquired of Southtown owner Chad Klimek as to the relationship between Southtown and Duane's. In response, Klimek provided a copy of a Product Sales and Facility Use Agreement between Northstar Hospitality, LLC and Duane's House of Pizza, Inc ("Agreement"). This Agreement provides, in part:

¶5 Facility Use. The Premises includes two kitchen facilities: one for the exclusive use by Duane's and the other for the use by Northstar in its food operations." "Duane's shall be deemed to lease said kitchen facilities during the term of this Agreement."

6. This Agreement further outlines the compensation terms between the two parties. Specifically, Duane's is obligated to pay a monthly rent for the use of the separate kitchen space, and that Northstar shall compensate Duane's for 90% of the retail price of the pizza served on the Southtown premises. Duane's is responsible for determining the retail price of the pizza on the Southtown menu.

7. The Agreement further provides that Duane's is responsible for the sales tax on all pizza's sold.

8. The Agreement provides that if the customer is not satisfied with the pizza, Duane's is responsible for addressing the customer complaint "in the form of Duane's gift cards, credit vouchers or the like, in the sole discretion of Duane's."

9. Liquor Control Board member Chris Ohman, Department of Public Health, informed the Liquor Control Board members that "in their (Public Health's) restaurant inspections, they (Duane's and Southtown) are two separate businesses with separate plan, separate owners, separate coolers. They have always been two separate businesses."

10. The Liquor Control Board, after hearing and discussion, determined that Duane's House of Pizza, Inc. and Northstar Hospitality, LLC d/b/a Southtown Pourhouse are two separate business entities, and further that the inclusion of the Duane's pizza sales in the food sales requirement of the Class FA license held by Southtown is not in compliance with the license terms.

11. The Liquor Control Board voted unanimously in favor of finding that Southtown was "in violation of the food sales requirement and that this be considered a first violation."

12. Fargo Municipal Code §25-1512 (F) provides for the penalty for an audit violation, as follows:

F. For those businesses with liquor licenses requiring a food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio), there shall be an audit at least once every three (3) years (one-third of the licensees each year) provided, however, that subject businesses obtaining a new license and businesses that transfer an existing license to new owners shall be subject to an audit 12 months after obtaining or transferring of the license. The city of Fargo shall pay the cost of the audit if the business is in compliance with the required food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio). The liquor licensee shall, however, pay for the cost of the audit if the business is not in compliance with the required food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio).

1. First offense - six month probationary period to come into compliance to be followed by a second audit establishing compliance. Sale and consumption of alcoholic beverages shall be discontinued at 1:00 a.m. for such time as the length of any probationary period. Yearly audits for the next two years to be paid for by the liquor licensee.
2. Second offense - thirty days suspension of liquor license not requiring closure of the business which may remain open for food sales. Yearly audits for the next two years to be paid for by the liquor licensee.
3. Third offense - revocation of license.

13. Notice of the Finding of Violation was served on Southtown in accordance with Fargo Municipal Code §25-1512 (G).

14. Southtown timely appealed to the Board of City Commissioners for review of the Liquor Control Board findings.

15. After hearing and discussion, the Board of City Commissioners voted unanimously to deny Southtown's appeal from the Liquor Control Board and uphold the license violation for failing to meet the required 50% food sales.

CONCLUSIONS AND ORDER

Based on the foregoing Findings of Fact, it is the Board of City Commissioners' Conclusions that the Duane's House of Pizza, Inc. pizza sales is not properly included in the food sales for liquor licensee Northstar Hospitality, LLC d/b/a Southtown Pourhouse, and that Northstar Hospitality, LLC. d/b/a Southtown Pourhouse failed to meet the required food to alcohol ratio required by its Class FA license.

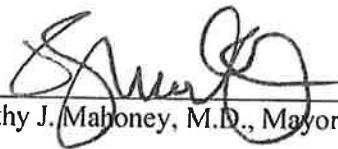
It is hereby **ORDERED** that Northstar Hospitality, LLC d/b/a Southtown Pourhouse is in violation of the terms of the Class FA License for failing to meet the food sales requirement, and further that this be considered a first violation. The penalty for the failed audit shall be in accordance with Fargo Municipal Code §25-1512 (F):

1. First Offense- six month probationary period to come into compliance to be followed by a second audit establishing compliance. Sale and consumption of alcoholic beverages shall be discontinued at 1:00 a.m. for such time as the length of any probationary period. Yearly audits for the next two years to be paid for by the liquor licensee.

DATED this 24 day of August, 2020.

BOARD of CITY COMMISSIONERS of the CITY
OF FARGO, a North Dakota Municipal Corporation

By


Timothy J. Mahoney, M.D., Mayor

ATTEST:


Steven Sprague, City Auditor

Memo to Liquor Control Board
Dated: May 12, 2020
Nancy J. Morris, Assistant City Attorney

Re: Southtown Pourhouse Audit Recommendation

Northstar Hospitality, d/b/a Southtown Pourhouse ("Southtown"), was approved for a Class FA license on May 21, 2018. As you know, a Class FA license requires the licensee to hold a restaurant license and "which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverage." FMC §25-1506(J)(1). This section further provides, "Main course menu items shall be fully prepared and cooked on the premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for fast or convenient service." "It is the intention of this restriction that the purpose of an "FA" license is to allow the sale of alcoholic beverages as an adjunct to the restaurant operation and not that of operating a full-time liquor establishment. A recipient of an "FA" license shall provide a full and complete kitchen adequate for the preparation of food as required by this ordinance. Such kitchen shall be subject to approval by the commission." FMC § 25-1506 (J)(4). Fargo Municipal Code further provides that "As part of the licensee's obligation that the licensee derive fifty (50%) or more of its annual gross receipts from the sale of prepared meals than from the sale of alcoholic beverages, as discussed in section 25-1504.2, the licensee shall retain and keep appropriate business records concerning purchase of food and alcoholic beverages and sales receipts for food and alcoholic beverages." FMC §25-1506(J) (6).

A complaint was made to the City Auditor in early April 2019 regarding the business practices of Southtown. In particular, the complainant questioned the use of Duane's House of Pizza, Inc. ("Duane's") pizza sales by Southtown in its food sales calculations to accomplish the 50% requirement. At that time, it was determined that the percentage food sales to be an audit issue, and that the issue would be flagged in the annual audit for further inquiry.

The audit completed on February 25, 2020, reflected a food to alcohol sales ratio of 53%/47%. The food sales information provided by Southtown to Brady Martz auditors specifically identified pizza sales separate from other foods sales. Without the pizza sales, the food to alcohol sales ratio is 47%, prompting further investigation. Several meetings were held between City Auditor Steve Sprague, Chad Klimek, Owner of Southtown, me, and later with counsel for Southtown.

Mr. Klimek provided a copy of a Product Sales and Facility Use Agreement between Northstar Hospitality, LLC and Duane's House of Pizza, Inc. (copy attached). The Agreement addresses several relevant facts to the consideration of the percentage of food sales. In particular, ¶5 of the Agreement, Facility Use, provides "The Premises includes two kitchen facilities: one for the exclusive use by Duane's and the other for the use by Northstar in its food operations." Further, ¶5 provides that "Duane's shall be deemed to lease said kitchen facilities during the term of this Agreement." ¶ 6, Compensation, provides that Duane's is obligated to pay a monthly rent for the use of the kitchen space, and that Northstar shall compensate Duane's for 90% of the retail price of the pizza served on the Southtown premises. The Agreement further provides that Duane's is responsible for the sales tax on all pizza's sold. Finally, the Agreement provides that if the

customer is not satisfied with the pizza, Duane's is responsible for addressing the customer complaint "in the form of Duane's gift cards, credit vouchers or the like, in the sole discretion of Duane's."

Duane's Pizza advertisement and business practices also appear relevant to the issue. On December 14, 2018, Duane's Facebook account made this announcement: "Great news! The Southtown Pourhouse will be open for dinner this evening starting at 4PM. They will be serving a limited menu, Burgers and Shareables, and our pizza will be available as well!" On December 16, 2018, Duane's posted: "In case you hadn't seen, we're sharing a building with the SouthTown Pourhouse- which means that you can hunker down at a table and enjoy a hot pie and a cold brew while watching the game, or just grab a quick beer while waiting to pick up your order!"

After careful consideration of the facts as presented, it appears that Southtown and Duane's are separate business entities independent of each other, and that the inclusion of Duane's pizza sales in the food sale requirement for the Class FA license held by Southtown is not in compliance with the license terms. Therefore, the required 50% food to alcohol ratio has not been met. Duane's is responsible for the cost of goods sold, pays the sales tax, operates out of its own kitchen, and is responsible for quality control. Duane's sells the pizza to Southtown at a discount, and then Southtown resells the pizza to the dine-in customer.

Based on the foregoing, it is the recommendation of the City Auditor that the Liquor Control Board find that Northstar Hospitality, LLC d/b/a Southtown Pourhouse has failed the audit requirement that food sales equal or exceed liquor sales for audit year 2019.

If this board finds that Southtown has failed the audit, the sanction for a violation of the food to alcohol sales ratio is outlined in FMC§ 25-1512 (F):

For those businesses with liquor licenses requiring a food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio), there shall be an audit at least once every three (3) years (one-third of the licensees each year) provided, however, that subject businesses obtaining a new license and businesses that transfer an existing license to new owners shall be subject to an audit 12 months after obtaining or transferring of the license. The city of Fargo shall pay the cost of the audit if the business is in compliance with the required food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio). The liquor licensee shall, however, pay for the cost of the audit if the business is not in compliance with the required food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio).

Penalties for failed audits shall be as follows:

1. First offense - six month probationary period to come into compliance to be followed by a second audit establishing compliance. Sale and consumption of alcoholic beverages shall be discontinued at 1:00 a.m. for such time as the length of any

probationary period. Yearly audits for the next two years to be paid for by the liquor licensee.

2. Second offense - thirty days suspension of liquor license not requiring closure of the business which may remain open for food sales. Yearly audits for the next two years to be paid for by the liquor licensee.
3. Third offense - revocation of license.

If this board recommends a sanction, the licensee may request a hearing by the board of city commissioners in accordance with FMC §25-1512 (G).

PRODUCT SALES AND FACILITY USE AGREEMENT

THIS AGREEMENT dated July 30th, 2018, is entered into by Duane's House of Pizza, Inc. and Northstar Hospitality, LLC, who together agree as follows:

1. **RECITALS.** For purposes of this Agreement:

- a. Duane's is a Fargo/Moorhead restaurant specializing in Pizza.
- b. Northstar is an alcohol establishment located in south Fargo, ND.
- c. Duane's and Northstar wish to set forth their agreement for the making and sale of Duane's Pizzas within the Northstar Premises.

2. **DEFINITIONS.** For purposes of this Agreement:

- a. "Agreement" shall mean this Product Sales and Facility Use Agreement between Duane's and Northstar.
- b. "Pizza" shall mean whole Pizza or Pizza by the slice.
- c. "Duane's" shall mean Duane's House of Pizza, Inc., a Minnesota corporation, whose mailing address is 2223 Highway 10 East, Moorhead, Minnesota 56560.
- d. "Northstar" shall mean Northstar Hospitality, LLC, a North Dakota limited liability company, whose mailing address is 4240 39th Avenue South, Fargo, North Dakota 58104.
- e. "Premises" shall mean the liquor establishment operated by Northstar located at 4281 45th Street South, Fargo, ND 58104.

3. **TERM.** The term of this Agreement shall be for a period of five (5) years commencing on the date that Northstar is first open to the public and Duane's is ready to operate its business in the Premises, with the opening to be mutually-agreed upon by the parties. The Parties agree that Duane's shall have the option to renew this Agreement for two (2) additional five (5) year terms, however such option is contingent upon Northstar renewing its lease on the Premises. If Duane's elects to exercise its option for an additional term, notice must be given to Northstar in writing at least six (6) months prior to the expiration of this Agreement. Duane's may terminate this Agreement with written notice to Northstar in event of the economic non-feasibility of the Duane's business operations planned at the Premises, in the sole determination of Duane's.

4. **PRODUCT SALES.** Duane's agrees to make Pizza, on demand, and on the Premises for the sale and consumption within the Northstar Premises according to the terms of this Agreement. Duane's may also on its own terms, sell and deliver Pizza to customers outside the Premises.

5. FACILITY USE. The Premises includes two kitchen facilities: one for the exclusive use by Duane's and the other for the use by Northstar in its food operations. Duane's shall be entitled to the exclusive use of its dedicated kitchen facilities within the Premises for Duane's operations. Duane's shall be deemed to lease said kitchen facilities during the term of this Agreement.

6. COMPENSATION. Duane's and Northstar agree that Duane's will determine the retail price for Pizzas produced by Duane's under the terms of this Agreement. Northstar is required to charge the retail price as determined and authorized by Duane's. The Parties further agree as follows:

a. During the term of this Agreement Duane's shall pay monthly rent to Northstar for the use of kitchen space to make and sell Pizzas in the amount of One Thousand Five Hundred and No/100ths (\$1,500.00) Dollars. Such rent shall be payable in advance on the first of each month. If either the first or last month of this Agreement is a partial month, such rent shall be prorated. In the event Duane's elects to extend this Agreement pursuant to paragraph 3 above, the rent during the term of the extension period shall be adjusted in proportion to any increases in rent that Northstar must pay its landlord for the Premises;

b. Northstar will pay to Duane's Ninety (90%) Percent of the retail price of each Pizza ordered and served on the Premises. On a daily basis after the close of business by Duane's, Duane's will prepare a reconciliation of the Pizzas delivered to Northstar, and accordingly Northstar will pay to Duane's the amount as calculated by this paragraph for Pizzas sold on the Premises;

c. Duane's shall pay any sales tax associated with the sale of Pizzas hereunder;

d. Duane's may sell and deliver Pizzas to its customers outside of the Premises in which Northstar shall not be entitled to any compensation for such sales; and,

e. Northstar shall pay Duane's on a weekly basis. Within seven (7) days of Northstar receiving the Sunday reconciliation for Pizzas sold from Duane's, Northstar shall pay that amount to Duane's. This continued arrangement of paying weekly and reconciling the Pizzas sold should continue each week during the term of this Agreement, unless otherwise agreed upon by the Parties in writing.

7. CUSTOMER COMPLAINTS. In the event that one of Northstar's customers complains about the quality of a Pizza prepared by Duane's hereunder, Duane's will correct the quality control issues and provide adequate compensation to the Northstar customers in the form of Duane's gift cards, credit vouchers or the like, in the sole discretion of Duane's.

8. INTELLECTUAL PROPERTY OF DUANE'S. During the terms of this Agreement, Duane's shall provide Northstar with a limited license to use the trademarks and name of Duane's for advertising on its promotional material located within Northstar and in advertising Northstar within the Fargo-Moorhead market in general, as may be approved in advance by Duane's.

9. EXCLUSIVITY. Parties further agree that Duane's Pizza will be the only and exclusive Pizza available for purchase at Northstar during the term of this Agreement. Northstar shall not offer for sale any other Pizza or Pizza products other than what can be purchased from Duane's.
10. SIGNAGE. Northstar shall allow Duane's to install signage on the exterior of the Premises advertising Duane's, in a form and manner mutually agreeable to the Parties, and consistent with the terms of the underlying lease agreement with the Landlord.
11. LANDLORD APPROVAL. Northstar represents and warrants that it has the authority to enter into this Agreement with Duane's, and that this Agreement does not violate the underlying lease for the Premises between Northstar and the landlord of the Premises. The undersigned landlord hereby agrees to the terms of this Agreement.
12. CONTINUATION OF OPERATIONS. In the event that Northstar ceases business operations on the Premises, Duane's may elect to continue this Agreement with Landlord directly, on the terms and conditions as provided in this Agreement. Landlord agrees that Duane's shall have the right to continue to use the kitchen facilities in the event that Northstar no longer conducts business operations on the Premises during the term of this Agreement.
13. OWNERSHIP OF EQUIPMENT. Duane's shall retain ownership of all equipment and fixtures installed by Duane's in the kitchen facilities for use by Duane's in performing this Agreement. Neither Northstar nor Landlord shall have any ownership interest in such equipment or fixtures installed by Duane's. The equipment and fixtures installed by Duane's shall not be subject to any secured interest. At such time as Duane's removes equipment or fixtures installed by Duane's in the Premises, Duane's shall make such repairs as necessary to restore the Premises to the condition at the beginning of this Agreement.
14. EMPLOYEES. Duane's shall use its own employees to staff its operations at the Premises.
15. ADMINISTRATION AND CONSTRUCTION. This Agreement shall be administered and construed in accordance with the following provisions:
- a. Time. Time is of the essence of this Agreement. Any reference in this Agreement to time periods of less than six (6) days shall in the computation of such time exclude Saturdays, Sundays and legal holidays. Any reference in this Agreement to time periods of six (6) days or greater shall in the computation of such time include Saturdays, Sundays and legal holidays. Any time period provided in this Agreement which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. on the next full business day.
- b. Captions. The captions on the paragraphs and subparagraphs of this Agreement are inserted only for the purpose of convenient reference. The captions shall not be used to construe or interpret the Agreement nor to prescribe the scope or intent of the Agreement.

c. Specific Performance. The parties stipulate that it is impossible to measure in money the damages which will accrue to a party to this Agreement by reason of a failure to perform any of the obligations under this Agreement. Therefore, if any party to this Agreement shall institute any action or proceeding to enforce the provisions of this Agreement, any person against whom such action or proceeding is brought hereby waives the claim or defense that such party has an adequate remedy at law. Such person shall not urge in any such action or proceeding the claim or defense that such remedy at law exists.

d. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect its other provisions. The Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

e. Entire Agreement. This Agreement constitutes the complete and entire understanding of the parties concerning the subject matter of this Agreement. Neither party shall be bound by or be liable for any statements, warranties, guarantees, or representations not set forth in this Agreement which may have been made by any broker, agent, employee or other person representing or purporting to represent a party to this Agreement.

f. Modification. No change or modification of this Agreement shall be valid unless the same be in writing and signed by all of the parties to this Agreement.

g. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be considered as an original of the Agreement. All executed counterparts shall constitute, and shall have the force and effect, of one and the same document, and shall be binding upon those who execute the Agreement, regardless of whether all parties execute the same document.

h. Persons Bound by this Agreement. This Agreement shall be binding upon the parties and their successors in interest. The rights and obligations of any party to this Agreement may be exercised or satisfied by that party's legal representative.

i. Governing Law. The provisions of this Agreement shall be governed by the laws of the State of North Dakota. Any dispute arising from this Agreement shall be venued in Cass County, North Dakota.

IN WITNESS WHEREOF, the parties have executed this Product Sales Agreement as of the day and year first above written.

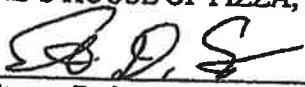
NORTHSTAR HOSPITALITY, LLC

By

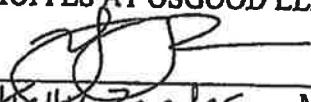


Chad Klimek, President

DUANE'S HOUSE OF PIZZA, INC.

By 
Steven D. Schultz, President

THE SHOPPES AT OSGOOD LLP, Landlord

By 
Kelly Zander, Managing Partner

3291128.4

CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

Ian R. McLean ▪ Alissa R. Farol ▪ William B. Wischer

March 3, 2022

4

Board of City Commissioners
City Hall
225 Fourth Street North
Fargo, ND 58102

Re: Property Acquisition- 714 Hackberry Drive

Dear Mayor and Commissioners,

Presented for your approval is the Settlement Agreement and Release for the acquisition of the property located at 714 Hackberry Drive. This property was acquired through negotiation in the normal course, but due to the fact that the Summons and Complaint had been served on the homeowners, and therefore legal process commenced, the document is presented as a Settlement Agreement and Release rather than a purchase agreement. The action was never filed with the court, and no further court action is necessary to accomplish the acquisition. Closing will take place in the ordinary course.

Suggested Motion: I move to approve the acquisition of the property located at 714 Hackberry Drive in accordance with the terms of the Settlement Agreement and Release, and authorize the Mayor to execute the same.

Please feel free to contact me if you have any questions, comments or concerns.

Regards,



Nancy J. Morris

Cc: Brenda Derrig, City Engineer

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Settlement Agreement" or "Agreement") is made and entered into by and between the **City of Fargo**, (hereinafter "City of Fargo" or "City"), a North Dakota Municipal Corporation and its officers, members, employees and agents in their official capacities, and **James J. Lepine and Joyce D. Lepine** (hereinafter both referred to as "the Lepines"), the owners of **714 Hackberry Drive South, Fargo, North Dakota**.

The above-named parties shall be collectively referred to as "the Parties."

RECITALS

- A.** The City of Fargo is in the process of constructing and improving flood protection for multiple areas in the City of Fargo. Properties on Hackberry Drive South back up on the Red River and have repeatedly required the construction of temporary levees when the Red River overflows its banks during floods.
- B.** The City Commission approved acquisition of the Lepine property located at 714 Hackberry Drive South, Fargo, North Dakota, on May 26, 2016.
- C.** The City of Fargo commenced an eminent domain action by personal service of a Summons and Complaint. The Summons and Complaint, with Exhibits A-E, were personally served on James and Joyce Lepine on June 14, 2021. Exhibit E to the Complaint is an Appraisal report with an Effective date of July 29, 2019. An Amended Complaint, with Exhibits A-E, was mailed and emailed to James and Joyce Lepine on August 13, 2021. Exhibit E to the Amended Complaint is an updated appraisal report dated July 21, 2021.
- D.** The Lepines are the owners of the real property located at 714 Hackberry Drive South, Fargo, North Dakota, (hereinafter referred to as the "Property") legally described as follows:

**Lot Six, in Block Three, of Harwood Groves Addition to the City of
Fargo, Cass County, North Dakota**
- E.** The Lepines appeared individually and through their attorney, John V. Boulger. The City of Fargo granted the Lepines an extension of time to answer the Complaint and, later, the Amended Complaint. The parties engaged in settlement negotiations. Those negotiations resulted in this Agreement and therefore, the eminent domain action was not filed with the Court.
- F.** The parties desire to enter into this Settlement Agreement and Release in order to provide for full settlement and discharge of all claims and defenses which any party made, or could have made, by reason of the events described above and upon the terms and conditions set forth below.

AGREEMENT

The Parties agree as follows:

1.0 Purchase.

- 1.1** The subject matter of this Agreement is the real estate described above, consisting of a single-family dwelling, other buildings located thereon, and all items affixed to the Property.
- 1.2** The total settlement amount is One Million One Hundred Thirty-Seven Thousand Ninety-Six Dollars (\$1,137,096.00). This sum represents payment for the revised appraised value of the Property in the amount of \$858,000; the replacement housing cost differential in the amount of \$117,000; the amount of costs identified by the Lepines including appraisal fees, attorneys' fees and estimated moving expenses, salvage permitted herein, as well as additional negotiated attorneys' fees and moving expenses and all other expenses connected with the City of Fargo's acquisition of the Property, as an administrative settlement and in lieu of proceeding with the pending action. The City does not agree all of the costs identified by the Lepines are compensable but recognizes there is value in avoiding the time and expense a trial would entail.
- 1.3** The mortgage, if any, as well as any liens or encumbrances, will be paid and the Lepines shall receive the balance of the purchase price, less any escrow amounts, in cash on the date of closing.
- 1.4** The City of Fargo shall pay for the cost of continuation of an abstract of title to the Property to a recent date. Said abstract must show that the Lepines have good and marketable title free and clear of all liens and encumbrances (other than those that will be handled at closing).
- 1.5** Property Taxes for the year of closing shall be prorated between the Parties as of the date of closing based upon the 2021 discounted amount paid of \$8,786. Special Assessment installments for the year of closing shall be prorated between the Parties. The Lepines shall be responsible for the prorated 2022 special assessment installment amount from January 1, 2022 to the date of closing. The City shall be responsible for the prorated 2022 special assessment installment amount after the date of closing. Prior year taxes and prior year installments of special assessments must be paid by the Lepines in advance of closing.
- 1.6** The Lepines shall sign a warranty deed prepared by the City of Fargo. The City of Fargo will take title as follows: City of Fargo, North Dakota, a municipal corporation.
- 1.7** The City shall pay the costs of closing. Closing shall take place as soon as practicable. The Parties intend for closing to occur within Two (2) months of the execution of this Agreement by the Parties.

- 1.8 The City shall take possession of the real estate on the day of closing, subject to occupancy by the Lepines in terms described below.
- 1.9 The Lepines agree to allow the City of Fargo to enter the Property for the limited purpose of testing and inspection for the presence of asbestos. Such inspection and testing shall take place near the time the Lepines vacate the Property. However, the City must give the Lepines reasonable notice of its intent to inspect and the inspection must be done at a mutually agreed upon time. The Lepines shall not unreasonably withhold consent to an inspection by the City.
- 1.10 The Lepines provide no express warranties on the Property. The City of Fargo understands and agrees that the property is a used home and is being purchased "AS IS".
- 1.11 The Lepines may be eligible for relocation payments and other assistance in accordance with Federal regulations which implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (Uniform Relocation Act, 42 U.S.C. 4601 et seq.) and Chapter 54-01.1 of the North Dakota Century Code. Nevertheless, the Lepines agree this Agreement includes payment for relocation assistance and that all arguably applicable policies have been satisfied with respect to the acquisition of the Property by the City.
- 1.12 The Parties agree the Lepines shall be entitled to remove, without cost, the items identified on the Salvage List attached hereto as **Exhibit A**. All items shall be removed in a professional manner and a contractor must be engaged, if necessary. The Lepines agree to remove all salvage items during their occupancy and prior to the expiration of the occupancy term set forth herein, or any extension thereof.

2.0 Occupancy Terms

- 2.1 The City of Fargo agrees to allow the Lepines to remain, rent free, in the premises until July 31, 2023. In no event shall the Lepines occupy the Property beyond July 31, 2023, unless otherwise agreed to in writing signed by the Parties.
- 2.2 If the Lepines vacate the Property prior to the expiration of the time period for occupying the premises, the Lepines shall immediately notify the City of Fargo.
- 2.3 The Lepines shall furnish to the City a copy of a tenant's policy of insurance insuring against liability in the principal sum of at least \$500,000 per occurrence. The City of Fargo shall be named as an additional insured on said policy. The Lepines shall pay all utilities to the premises until such time as they vacate the Property.
- 2.4 The Lepines are occupying the premises "AS IS." If the Property should become uninhabitable, the Lepines' remedy is to undertake necessary repairs at their own expense or vacate the Property. The City shall not be responsible for any

alternative housing costs, repairs or any other associated costs. The Lepines shall notify the City of Fargo if the Property becomes uninhabitable.

- 2.5 The Lepines agree that the City of Fargo will not be responsible for security or protection of the Property.
- 2.6 If a flood event occurs during the period of occupancy, the City will not ask the Lepines to vacate nor will the City provide flood protection to the Property. If necessary, the City may build a levee in front of the Property and, temporarily, terminate City services to the Property, including sewer and water, in order to protect City infrastructure. Once the flood threat has passed, the City will remove the levee.
- 2.7 The City of Fargo agrees to be responsible for removing snow from the sidewalk in front of the Property.

3.0 Release and Discharge

- 3.1 In consideration of the settlement amount set forth above, the Lepines, on behalf of themselves, their heirs, and assigns, hereby release and forever discharge the City of Fargo and the Released Parties, identified as the City of Fargo its insurers, agents, representatives and employees, from any and all past or future claims, demands, obligations, actions, causes of action, rights, damages, appraisal fees, costs, expenses and compensation of any nature whatsoever, which the Lepines might have brought and which could, in any way, arise out of the events described in the Recitals above.
- 3.2 The Lepines acknowledge and agree that the release and discharge set forth above is a waiver of all claims and defenses they might have asserted and a general release regarding causes of action they might have brought regarding the events described in the above Recitals including any obligation to pay damages, attorney's fees and costs. It is understood and agreed by the parties that this settlement is a compromise reached in order to resolve the actions described above.
- 3.3 The Lepines waive the provisions of N.D.C.C. § 9-13-02, or any similar or other applicable state or federal statute or regulation, which provides that a general release does not extend to claims a creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected the settlement with the debtor.

4.0 Representation of Comprehension of Document

In entering into this Settlement Agreement and Release, the Lepines represent that they have relied upon the advice of their attorneys and advisors, who are attorneys and advisors of their own choice, concerning the legal and income tax consequences of this Settlement Agreement and Release; that the terms of this Settlement Agreement and Release have been completely read and explained to the Lepines by their attorneys; and

that the terms of this Settlement Agreement and Release are fully understood and voluntarily accepted by the Lepines.

5.0 Warranty of Capacity to Execute Agreement

The Lepines represent and warrant that no other person or entity has, or has had, any interest in the premises or causes of action referred to in this Settlement Agreement and Release, except as otherwise set forth herein; that the Lepines have the sole right and exclusive authority to execute this Settlement Agreement and Release and receive the sums specified in it; and that the Lepines have not sold, assigned, transferred, conveyed or otherwise disposed of any of the premises or causes of action referred to in this Settlement Agreement.

6.0 Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of North Dakota.

7.0 Additional Documents

All parties agree to cooperate fully and execute any and all supplementary documents, either in person or by electronic document signing, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement and Release.

8.0 Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between the Lepines, their successors, heirs, and assigns, and the City of Fargo, its insurers, employees, agents and representatives with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

9.0 Effectiveness

This Settlement Agreement and Release shall become effective immediately following execution by each of the Parties. A Party's dated signature obtained through DocuSign shall be treated as an original signature to the same extent as an attested signature. Each party shall be provided with a copy of this Settlement and Release Agreement once it has been fully executed. Each copy shall be considered an original document.

THIS IS A RELEASE. READ BEFORE SIGNING.

Dated: 02-25-2022


James I. Lepine

Dated: 02-25-2022


Joyce D. Lepine

Dated: _____

City of Fargo, Buyer

By: Dr. Timothy Mahoney, M.D.
Its: Mayor

ATTEST:

Steven Sprague, City Auditor

THIS IS A RELEASE. READ BEFORE SIGNING.

Dated: _____

James J. Lepine

Dated: _____

Joyce D. Lepine

Dated: _____

City of Fargo, Buyer

By: Dr. Timothy Mahoney, M.D.

Its: Mayor

ATTEST:

Steven Sprague, City Auditor

EXHIBIT A - SALVAGE LIST

1. Built-in cabinets in Bedroom closets, Kitchen, Living room, Dining area, and Bathrooms
2. All doors and door frames
3. Light fixtures in foyer
4. Light fixtures in dining room
5. Light fixtures in kitchen
6. Built-in double ovens
7. Built-in cook top range
8. Dishwasher
9. Trash Compactor
10. Garbage disposals (2)
11. Hunter Douglas Silhouette Shades

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March 3, 2022

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is the *Application for Abatement or Refund of Taxes* prepared by Robert Hill of Robert Hill Law, LTD. The application is for a food-grade distribution warehouse under the ownership of Supervalu Wholesale Operations, located at 3501 12th Ave N. and is requesting a value reduction for the following:

2021 – From \$19,943,800 down to \$12,158,800

The support for the reduction presented by the appellant is in the packet, including a comparison of sales, an income approach, and questions of equalization.

Our analysis of the appellant's support is that none of the sales or income presented are for food-grade warehousing, and local sales of directly comparable properties were not used.

Information regarding our valuation has been included for this property, including a market comparison and equity analysis. Local sales of food-grade properties supports our valuation, however, we acknowledge the rareness of sales of this type of property in our area. Therefore, we included sales of food-grade warehousing from outside our area, in comparable markets, for further market indications. We feel the valuation is supported and equalized with similar properties.

The appellant has waived the public hearing before the City Commission, so they will not be presenting their case before this board. This motion is only as a recommendation for the Cass County Commission.

SUGGESTED MOTION:

Denial of the Application of Abatement or Refund of Taxes on 3501 12 Ave N. and retain the 2021 value.

Sincerely,



Mike Splonskowski
Fargo City Assessor

SuperValu (UNFI)

Parcel Number: 01-1043-00040-000

3501 12 Ave N

Owner: SuperValu Wholesale Operations Inc

Appeal of Assessment for Year: 2021

Name of Applicant: SuperValu Wholesale Operations
 Representative: Robert Hill Law, LTD

Assessed Value(s) 2021 19,943,800
 Applicants Requested Value(s) 2021 12,158,800 -39%

General Property Information

Property Type Dist Whse / Cold Stg / Shop
 Land Size 2,165,651 sf (49.71 ac +/-)
 Year Built 1977
 Building Area (Main) 319,988
 Building Area (Shop) 11,487
 Total Building Area 331,475
 Mortgage (02/11/2021) 18,236,592

**Summary**

Applicant has provided an equalization analysis, sales comparison analysis, and income approach to value as support for the reduced value. The average of the two approaches to value is used to support the requested reduction. Appellant has ignored or omitted the valuation of the 11,487 sf shop in the appeal packet. We recognize the difficulty of finding comparable transactions for a market approach to value. However, we question the appellant's choice to use only one sale from within the City of Fargo. The sales used by the appellant are also not comparable with the subject's amenities and location; and in some cases represent split transactions. We also find the choice of inputs in the provided income approach questionable.

Staff supports the 2021 value with comparable sales below.

Comparable Sales Summary

Property Name/Type	Address	City	Bldg Size	Year Built	Sale Date / Assess Year	Sale Price / Assess Value	Total \$/SF	Bldg \$/SF
Dakota Molding	1405 43 St N	Fargo	43,920	1995	08/06/2021	3,117,400	67.30	56.93
Cash-Wa	4105 15 Ave N	Fargo	147,418	1989	10/11/2019	5,504,400	37.35	27.50
Spartan Nash Dist	3402 4 Ave S	Fargo	96,900	2016	01/21/2019	6,332,000	65.35	55.37
St. Cloud Cold Stg	519 28 Ave S	St. Cloud, MN	302,660	1989	05/13/2020	20,200,000	66.74	63.80
Fairbault Food	13512 Business Ctr Dr NW	Elk River, MN	73,447	2000	01/21/2022	6,150,000	88.64	73.31
Buddy's Kitchen Inc**	21150 Hamburg Ave	Lakeville, MN	87,505	1971	11/30/2021	7,000,000	80.00	65.56
Bix Produce**	3060 Centerville Rd	Little Canada, MN	207,509	1987	10/28/2020	34,000,000	163.85	150.58
Subject	3501 12 Ave N		331,475	1977		19,943,800	60.17	47.10

** Properties under lease / leased back at time of sale. Sales in gray are shown for informational purposes, but not relied upon to set local assessed values.

Competing Properties (Assessed Values) Summary

We studied assessed values of industrial properties for equalization. We focused on properties measuring larger than 50,000 sf and built between 1952 and 2002. We found 47 such properties in Fargo. For 2021, the median assessed value per square foot was \$50.18 per square foot. The median assessed value for the buildings themselves was \$41.80 per square foot. The subject sits closer to the 3rd quartile of this property group. Considering the subject location and amenities, we find no equalization issues with the subject property.

	Total \$/SF	Bldg \$/SF
Maximum	91.61	71.55
3 rd Quartile	60.13	49.13
Median	50.18	41.80
1 st Quartile	40.69	31.34
Minimum	21.66	16.66
Subject	60.17	47.10

Recommended Action: Deny the request for abatement for tax year 2021

Information provided above is a summary of the analysis conducted. Full analysis is provided in the Assessment Department's work file.



Finance Office

Telephone: 701-241-5600

Fax: 701-241-5728

SMB-FIN@casscountynd.gov

January 18, 2022

Steve Sprague
City of Fargo
PO BOX 2083
Fargo, ND 58107-2083

Dear Mr. Sprague,

Enclosed is the application for abatement and settlement of taxes submitted by Supervalu Wholesale Operations.

Please be reminded that Section 57-23-06 of the North Dakota Century Code states the following: "Within ten days after receiving an application for abatement, the city auditor or the township clerk shall give the applicant a notice of a hearing to be held before the governing body of the city or township, or such other committee as it may designate, in which the assessed property is located. Said hearing shall be set for no more than sixty days after the date of the notice of hearing. The applicant may waive, in writing, the hearing before such governing body or designated committee at any time before the hearing".

Please have your city commission make a recommendation on the back of the abatement, sign it, and return it to this office.

Sincerely,

Brandy Madriga
Cass County Finance Director

dkb

Enclosure

ROBERT HILL LAW, LTD.

ATTORNEYS AT LAW

1161 WAYZATA BOULEVARD EAST, #399
WAYZATA, MINNESOTA 55391
E-MAIL: rob@roberthilllaw.com

GENERAL TELEPHONE: 952-426-7373

ROBERT A. HILL*
*Also Admitted in Virginia

January 14, 2022

VIA US MAIL

Cass County Auditor
Cass County Courthouse
211 9th Street South
Fargo, ND 58103

Re: Supervalu Application for Abatement or Refund of Taxes

Dear County Auditor:

Enclosed for filing are two copies of the Application for Abatement or Refund of Taxes for the following property:

3501 12th Ave N, Property I.D. No. 01-1043-00040-000

This is in addition to the copy previously submitted/mailed to Paul Fracassi. Please advise of the time and place the hearing will be held. Thank you for your attention to this matter and please do not hesitate to call with any questions.

Sincerely,



Robert A. Hill

RAH/kka

Application For Abatement Or Refund Of Taxes North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1 of the year following the year in which the tax becomes delinquent.

State of North Dakota Assessment District Fargo
County of Cass Property I.D. No. 01-1043-00040-000 Segments 1 & 2
Name SUPERVALU WHOLESALE OPERATIONS Telephone No. _____
Address 3501 12th Ave N

Legal description of the property involved in this application:

Loc: 0 Block: 35 GREAT NORITERN 3RD THAT PT OF GRE AT NO 3RD ADDN DESC AS FOLL: BEG AT THE SW COR OF SEC 35-140-49 THEN N 90DEG00'00" E-ASSUMED BEARIN G-ALG THE SLY LN OF SD SEC 35 FOR DIST OF 1229.10' THEN N 00DEG00'00" E FOR A DIST OF 50.00' BEING A PT ON THE ELY RIGHT-OF-WAY LN OF INTERSTATE HIGH WAY 29 AND ON THE NLY R/W LN OF 12 AV N BEING THE TR PT OF BEG THEN N 90 DEG 00' 00" E ALG THE NLY R/W LN OF SD 12 AV N FOR A DIST OF 579.62' TO A PT BEING 803.5' W OF AS MEASURED AT RIGHT ANGLES TO TH

Total true and full value of the property described above for the year 2021 is:

Land \$ 4,331,000
Improvements \$ 15,612,800
Total \$ 19,943,800
(1)

Total true and full value of the property described above for the year 2021 should be:

Land \$ 2,274,000
Improvements \$ 9,884,800
Total \$ 12,158,800
(2)

The difference of \$ 7,785,000 true and full value between (1) and (2) above is due to the following reason(s):

- ☐ 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
☒ 2. Residential or commercial property's true and full value exceeds the market value
☐ 3. Error in property description, entering the description, or extending the tax
☐ 4. Nonexisting improvement assessed
☐ 5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
☐ 6. Duplicate assessment
☐ 7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
☐ 8. Error in noting payment of taxes, taxes erroneously paid
☐ 9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
☐ 10. Other (explain) _____

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go directly to question #3

1. Purchase price of property: \$ _____ Date of purchase: _____
Terms: Cash _____ Contract _____ Trade _____ Other (explain) _____
Was there personal property involved in the purchase price? _____ Estimated value: \$ _____
yes/no _____
2. Has the property been offered for sale on the open market? _____ yes/no _____. If yes, how long? _____
Asking price: \$ _____ Terms of sale: _____
3. The property was independently appraised: _____ No _____ Purpose of appraisal: _____
yes/no _____ Market value estimate: \$ _____
Appraisal was made by whom? _____
4. The applicant's estimate of market value of the property involved in this application is \$ 12,158,800
5. The estimated agricultural productive value of this property is excessive because of the following condition(s): _____

Applicant asks that _____

By filing this application, I consent to an inspection of the above-described property by an authorized assessment official for the purpose of making an appraisal of the property. I understand the official will give me reasonable notification of the inspection. See N.D.C.C. § 57-23-05.1.

I declare under the penalties of N.D.C.C. § 12.1-11-02, which provides for a Class A misdemeanor for making a false statement in a governmental matter, that this application is, to the best of my knowledge and belief, a true and correct application.

Signature of Preparer (if other than applicant) _____

10/22/21

Date

Signature of Applicant

Date

24778
(3-2014)

Recommendation of the Governing Body of the City or Township

Recommendation of the governing board of _____

On _____, the governing board of this municipality, after examination of this application and the facts, passed a resolution recommending to the Board of County Commissioners that the application be _____

Dated this _____ day of _____, _____

City Auditor or Township Clerk

Action by the Board of County Commissioners

Application was _____ by action of _____ County Board of Commissioners.

Approved/Rejected

Based upon an examination of the facts and the provisions of North Dakota Century Code § 57-23-04, we approve this application. The taxable valuation is reduced from \$ _____ to \$ _____ and the taxes are reduced accordingly. The taxes, if paid, will be refunded to the extent of \$ _____. The Board accepts \$ _____ in full settlement of taxes for the tax year _____.

We reject this application in whole or in part for the following reason(s). Written explanation of the rationale for the decision must be attached.

Dated _____

County Auditor

Chairperson

Certification of County Auditor

I certify that the Board of County Commissioners took the action stated above and the records of my office and the office of the County Treasurer show the following facts as to the assessment and the payment of taxes on the property described in this application.

Year	Taxable Value	Tax	Date Paid (if paid)	Payment Made Under Written Protest?
				yes/no

I further certify that the taxable valuation and the taxes ordered abated or refunded by the Board of County Commissioner are as follows:

Year	Reduction in Taxable Valuation	Reduction in Taxes

County Auditor

Date

Application For Abatement
Or Refund Of Taxes

Name of Applicant

Super Value Wholesale

County Auditor's File No.

4535

Date Application Was Filed
With The County Auditor

1/18/2022

Date County Auditor Mailed
Application to Township
Clerk or City Auditor

1/18/2022

(must be within five business days of filing date)

Authorization of Agency

This letter is to serve as our authorization to you for Robert A. Hill, Esq., of Robert Hill Law, Ltd, law firm, phone number 952-426-7373 and Suzanne Grimm and Stephanie Paul, of Cresa Minneapolis, phone number 612-337-8498, to represent the interest of Supervalu Wholesale Operations Inc. and our affiliated entities in our appeal of the 2021 valuations for our properties located in the State of North Dakota. A photocopy of this letter is attached to each property appeal on our behalf, and may be relied upon by you as such during the review proceedings.

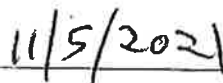
Should you have any questions regarding this authorization, please contact David Schafer at 952-828-4487.

Sincerely,

Supervalu Wholesale Operation Inc,



Owner



Date



ASSESSMENT DEPARTMENT

FARGO, ND

MAR 23 2021

FARGO, ND 58102

SUPERVALU WHOLESALE OPERATIONS INC

Date 3/16/2021

11840 VALLEY VIEW RD

EDEN PRAIRIE MN 55344

**NOTICE OF INCREASE IN REAL ESTATE ASSESSMENT
AND BOARD OF EQUALIZATION MEETINGS**

Parcel Number: 01-1043-00040-000

Property Location: 3501 12 AVE N

The Assessment Department has arrived at a new value on this property for the 2021 tax year. This may be due to new construction, improvements to the property, realignment of property boundaries, an exemption expiring, or a new appraised value due to changes in the market.

North Dakota statute (N.D.C.C. § 57-02-53) requires us to inform you that an increase in assessment value does not mean property taxes on the parcel will increase.

If you would like to appeal your value to the Board of Equalization, please contact the Assessment Department as soon as possible at 701-241-1340 or by email at Assessor@FargoND.gov. We will contact you and assist you through the process. In-person attendance is not required.

Real Estate Description:

LOT BEG AT SW COR OF SEC 35, TWP 140N, RGE 49W, THEN N 90 DEG 00 MIN 00 SEC E ASSMD BRG ALG SLY LN OF SD SEC 35, FOR A DIST OF 1229.10 FT, THEN N 00 DEG 00 MIN 00 SEC E FOR A DIST OF 50 FT BEING A PT ON ELY R/W LN OF I-29 & ON NLY R/W LN OF 12 AVE N BEING TRUE PT OF BEG, THEN N 90 DEG 00 MIN 00 SEC

Partial Legal Only (Please contact Assessor's Department for further information.)
Great Northern 3rd

	** Full Value **	** Net After Exemptions and Credits **
Current Year:	19,943,800	19,943,800
Last Year:	17,807,000	17,807,000
Change:	2,136,800	2,136,800

Scheduled Hearings:

The City Board of Equalization will meet on April 13, 2021, in the City Commission Chambers at 225 4th St. N. in Fargo at 7:30AM.

The County Board of Equalization will meet on June 7, 2021, in the Cass County Courthouse at 211 9th St. S. in Fargo at 3:30PM.

The State Board of Equalization will meet on August 10, 2021, in the State Capitol Building at 600 E. Boulevard Ave. in Bismarck at 8:30AM.

**SuperValu/UNFI
3501 12th Ave, Fargo, ND, 58102
Parcel Number: 01-1043-00040-000
Segment 1 & 2**

Table of Contents:

- One: Information on Subject Property**
- Two: Sales Comparison Grid**
- Three: Income Value Approach**
- Four: Conclusion**

SuperValue/UNFI

3501 12th Ave N, Fargo, ND 58102



Building Size:	315,157 SF
Age:	Built in 1977 (45 years old)
Class:	B
Land Size:	49.08 Acres (2,137,925 square feet)
Owned:	Yes
2020 AV:	\$17,807,000 (\$56.50 PSF)
2021 AV:	\$19,943,800 (\$63.28 PSF)
2022 AV:	\$20,089,400 (\$63.74 PSF)

ADDRESS

3501 12th Ave N, Fargo, ND 58102

LEGAL DESCRIPTION

BEG AT SW COR OF SEC 35, TWP 140N, RGE 49W, THEN N 90 DEG 00 MIN 00 SEC E ASSMD BRG ALG SLY LN OF SD SEC 35, FOR A DIST OF 1229.10 FT, THEN N 00 DEG 00 MIN 00 SEC E FOR A DIST OF 50 FT BEING A PT ON ELY R/W LN OF I-29 & ON NLY R/W LN OF 12 AVE N BEING TRUE PT OF BEG, THEN N 90 DEG 00 MIN 00 SEC E, ALG NLY R/W LN OF SD 12 AVE N FOR A DIST OF 579.62 FT TO A PT BEING 803.5 FT W OF AS MEAS AT R ANGLES TO, N-S 1/4 LN OF SD SEC 35, THEN N 00 DEG 52 MIN 28 SEC E, PARA TO N-S 1/4 LN OF SD SEC 35, FOR A DIST OF 603.66 FT, THEN S 89 DEG 07 MIN 32 SEC E FOR A DIST OF 223.34 FT, THEN N 00 DEG 42 MIN 10 SEC E, 15 FT W & PARA TO CENTERLINE OF BNRR SPUR TRACK RUNNING NLY, FOR A DIST OF 448.86 FT TO A PT OF TANGENTIAL CURVE TO LEFT, RADIUS 498.94, THEN NWLY ALG SD CURVE FOR AN ARC LENGTH OF 235.95, CENTRAL ANGLE 27 DEG 05 MIN 44 SEC, THEN N 62 DEG 30 MIN 31 SEC W FOR A DIST OF 233.89 FT, THEN N 27 DEG 29 MIN 29 SEC E FOR A DIST OF 42 FT, THEN N 62 DEG 30 MIN 31 SEC W 50 FT S OF & PARA TO CENTERLINE OF BNRR TRACK RUNNING NWLY FOR A DIST OF 1388.82 FT TO A PT ON ELY R/W LN OF I-29, THEN IN A SLY & ELY DIR ALG ELY R/W LN OF SD I-29 TO TRUE PT OF BEG

PROPERTY HISTORY

The UNFI building off 12th Ave N and Hwy 81 was built in 1977 making it nearly 45 years old. It serves as an approximately 304,000 SF warehouse and distribution center for SuperValu/UNFI. It also an automobile repair shop on site with approximately 11,000 SF which is used to service semi-trailers coming in and out of the facility. The building sits on 49.08 acres of land and is on the edge of Fargo's main industrial park.

The property is owned and exclusively occupied by UNFI/SuperValu.

ZONING

The subject property is zoned GI – General Industrial. The district is intended to serve as an exclusive industrial district and to protect manufacturing and industrial operations from encroachment by lower intensity, and incompatible uses.

Permitted uses include a wide range of applications including warehouses, manufacturing, freight movement, and wholesale operations.

NEIGHBORHOOD ANALYSIS



For this analysis, a neighborhood is defined by The Dictionary of Real Estate Appraisal, Sixth Edition, as "...a group of complementary land uses". The subject neighborhood is believed to meet the definition to the east and west as nearly all the properties within this defined area are improved with industrial or manufacturing applications.

As an industrial building, 3501 12th Ave N, is in the correct zoning but much closer to uses that are not complimentary such as agricultural to the north, retail, mobile homes and High Density multifamily to the South/Southeast. It lies on the outer edge of the GI – General Industrial district.

The east/west neighborhood has a large degree of industrial users like Schwans, WestRock, Marvin Windows, Dacotah Paper, PepsiCo, and Cardinal IG.

The subject is the largest industrial property in the immediate vicinity with single family residential and high density multifamily to the southeast. Directly to the east, are two additional industrial sites, but not nearly the same size as 3501 12th Ave.

Surrounding Property Valuations

If you look at the surrounding industrial buildings, it is clear that the only buildings with PSF valuations above \$50.00PSF are sites built 1995 and newer. Sites that compare to 3501 12th Ave, so built between 1970 and 1980 range from \$39.00-\$46.00 PSF.

Examples:

1970-1980

1301 39th St N – Built 1975 - \$39.23 PSF

3940 15th Ave N – Built 1976 - \$39.79 PSF

3802 15th Ave N – Built 1972 - \$46.18 PSF

1995 – Present

1616 43rd St N – Built 1998 – \$69.84

1425 47th St N – Built 2005 - \$71.03 PSF

4637 16th Ave N – Built 1995 (Reno 2005) - \$74.21 PSF

1210 47th St N – Built 2009 - \$69.72 PSF

DESCRIPTION OF THE LAND

Land to Building

Ratio:

6.78 to 1 based on a gross building area of 315,157 square feet and usable land area of 2,181,568 square feet.

Zoning:

GI – General Industrial District

Utilities:

Municipal water and sewer, natural gas, electricity, and telephone are available to the site.

Curb Cuts:

Access to the site is gained off a left turn from 12th Ave N heading East bound from a stoplight or a right turn on 12th Ave N heading westbound.

Neighboring Uses:

North - Public Institutional
East - General Industrial
South - Multi-Dwelling – Mobile Home Park – Light Industrial

Rail:

A railroad line bisects the lot on the north end from the right East heading North West.

Flood Plain Status: Parcel Critical Elevation - 34

Traffic:

According to Traffic Counts from 2017, 12th Ave N receives between 10,000 and 11,500 VPD. Highway 81 on ramp going north receives around 1,000 VDP while Highway 81 receives nearly 56,000 VPD according to a 2021 count.

Attributes:

Positive

- ☐ Large, level site with potential for rail service
- ☐ Frontage to Hwy 81 with interchange easily accessible
- ☐ Located on the outer edge of industrial park near multdwelling and mobilehome park
- ☐ Site only have dock doors on one side while being extremely wide creating inefficiency within the building for distribution purposes

Parcel Number: 01104300040000

General Information

City/Township:	Fargo City
Taxpayer Name:	SUPERVALUE WHOLESALE OPERATIONS INC
Property Address:	3501 12 AVE N
Section:	35
Subdivision:	Great Northern 3rd
Extra Territorial Area:	
Lot:	0
Legal Description:	GREAT NORHTERN 3RD THAT PT OF GREAT NO 3RD ADDN DESC AS FOLL: BEG AT THE SW COR OF SEC 35-140-49 THEN N 90DEG00'00" E-ASSUMED BEARING-ALG THE SLY LN OF SD SEC 35 FOR DIST OF 1229.10' THEN N 00DEG00'00" E FOR A DIST OF 50.00' BEING A PT ON THE ELY RIGHT-OF-WAY LN OF INTERSTATE HIGHWAY 29 AND ON THE NLY R/W LN OF 12 AV N BEING THE TR PT OF BEG THEN N 90 DEG 00' 00" E ALG THE NLY R/W LN OF SD 12 AV N FOR A DIST OF 579.62' TO A PT BEING 803.5' W OF AS MEASURED AT RIGHT ANGTS TO THE N-S 1/4 LN OF SD SEC 35 THEN N 00 DEG 52' 28" E PARA TO THE N-S 1/4 LN OF SD SEC 35 FOR A DIST OF 603.66' THEN S 89DEG 07' 32" E FOR A DIST OF 223.34' THEN N 00DEG 42' 10" E 15' W & PARA TO THE CENLN OF THE BR NO RR SPUR TRACK RUNNING NLY FOR A DIST OF 448.86' TO A PT OF TANGENTIAL CURVE TO THE LEFT RADIUS 498.94' THEN NWLY ALG SD CURVE FOR AN ARC LENGTH OF 235.95' CENTRAL ANG 27 DEG 05' 44" THEN N 62DEG 30' 31" W FOR A DIST OF 233.89' THEN N 27 DEG 29' 29" E FOR A DIST OF 42.00' THEN N 62 DEG 30' 31" W 50' S OF & PARA TO THE CENLN OF THE BR NO RR TRACK RUNNING NWLY FOR A DIST OF 1388.82' TO A PT ON THE ELY R/W LN OF I-29 THEN IN A GENERALLY SLY & ELY DIRECT ALG THE ELY R/W LN OF SD I-29 TO THE TR PT OF BEG CONT 49.8 ACS MORE OR LESS ALSO KNOWN AS AUD LOT 1
Lot Area:	0
Frontage Length:	
Depth Factor:	
Recorded Acres:	0

District Information

School District:	S001 (Fargo Public School District #1)
Water District:	W060 (Southeast Water Resource District)
Fire District:	()

General Information

Segment Id: 1

Owner 1: SUPERVALU WHOLESALE OPERATIONS INC

Owner 2:

Property Address: 3501 12 AVE N

Mailing Address: 11840 VALLEY VIEW RD #Error

Addition Name: Great Northern 3rd

Block:

Lot: BEG AT SW COR OF SEC 35, TWP 140N, RGE 49W, THEN N 90 DEG 00 MIN 00 SEC E ASSMD BRG ALG SLY LN OF SD SEC 35, FOR A DIST OF 1229.10 FT, THEN N 00 DEG 00 MIN 00 SEC E FOR A DIST OF 50 FT BEING A PT ON ELY R/W LN OF I-29 & ON NLY R/W LN OF 12 AVE N BEING TRUE PT OF BEG, THEN N 90 DEG 00 MIN 00 SEC E, ALG NLY R/W LN OF SD 12 AVE N FOR A DIST OF 579.62 FT TO A PT BEING 803.5 FT W OF AS MEAS AT R ANGLES TO, N-S 1/4 LN OF SD SEC 35, THEN N 00 DEG 52 MIN 28 SEC E, PARA TO N-S 1/4 LN OF SD SEC 35, FOR A DIST OF 603.66 FT, THEN S 89 DEG 07 MIN 32 SEC E FOR A DIST OF 223.34 FT, THEN N 00 DEG 42 MIN 10 SEC E, 15 FT W & PARA TO CENTERLINE OF BNRR SPUR TRACK RUNNING NLY, FOR A DIST OF 448.86 FT TO A PT OF TANGENTIAL CURVE TO LEFT, RADIUS 498.94, THEN NWLY ALG SD CURVE FOR AN ARC LENGTH OF 235.95, CENTRAL ANGLE 27 DEG 05 MIN 44 SEC, THEN N 62 DEG 30 MIN 31 SEC W FOR A DIST OF 233.89 FT, THEN N 27 DEG 29 MIN 29 SEC E FOR A DIST OF 42 FT, THEN N 62 DEG 30 MIN 31 SEC W 50 FT S OF & PARA TO CENTERLINE OF BNRR TRACK RUNNING NWLY FOR A DIST OF 1388.82 FT TO A PT ON ELY R/W LN OF I-29, THEN IN A SLY & ELY DIR ALG ELY R/W LN OF SD I-29 TO TRUE PT OF BEG

Additional Description:

District Information

Cass School District: 1

Elem. School District: Madison

Property Valuation

	Land	Improvements	Total
Current Appraised Value:	\$4,331,000.00	\$15,201,800.00	\$19,532,800.00

Building Information

Year Built:	1977	No. of Apartment Units:	
Total Building SqFt:	303970	Residential Story Height:	0 ()

Lot Size

DISCLAIMER: The City of Fargo provides property information to the public "as is" without warranty of any kind, expressed or implied. Assessed values are subject to change by the City of Fargo. In no event will the City of Fargo be liable to anyone for damages arising from the use of the property data. You assume responsibility for the selection of data to achieve your intended results, and for the installation and use of the results obtained from the property data.

Assessment records are for the sole purpose of identifying the land being taxed. In some cases to attain efficiency, Assessment Department legal descriptions may be shortened yet will retain sufficient information to identify the land. Since tax statements and records are not deeds and may contain abbreviated descriptions, they should not be used as a basis for a survey or a legal document and should not be used by surveyors or others as the primary source of a property description.

Front Width: 956
Back Width: 1623
Depth Side 1: 1288
Depth Side 2: 1593

Land Use: C (Commercial)
Property Type: 89 (Warehouse & Office)

Zoning

Zone 1: GI

Zone 2:

Conditional Use Permit:

Planned Unit Devel #:

Planned Unit Devel Date:

Conditional Overlay Number:

Conditional Overlay Date:

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General Information

Segment Id: 2
 Owner 1: SUPERVALU WHOLESALE OPERATIONS INC
 Owner 2:
 Property Address: 3501 12 AVE N
 Mailing Address: 11840 VALLEY VIEW RD #Error
 Addition Name: Great Northern 3rd
 Block:
 Lot: BEG AT SW COR OF SEC 35, TWP 140N, RGE 49W, THEN N 90 DEG 00 MIN 00 SEC E ASSMD BRG ALG SLY LN OF SD SEC 35, FOR A DIST OF 1229.10 FT, THEN N 00 DEG 00 MIN 00 SEC E FOR A DIST OF 50 FT BEING A PT ON ELY R/W LN OF I-29 & ON NLY R/W LN OF 12 AVE N BEING TRUE PT OF BEG, THEN N 90 DEG 00 MIN 00 SEC E, ALG NLY R/W LN OF SD 12 AVE N FOR A DIST OF 579.62 FT TO A PT BEING 803.5 FT W OF AS MEAS AT R ANGLES TO, N-S 1/4 LN OF SD SEC 35, THEN N 00 DEG 52 MIN 28 SEC E, PARA TO N-S 1/4 LN OF SD SEC 35, FOR A DIST OF 603.66 FT, THEN S 89 DEG 07 MIN 32 SEC E FOR A DIST OF 223.34 FT, THEN N 00 DEG 42 MIN 10 SEC E, 15 FT W & PARA TO CENTERLINE OF BNRR SPUR TRACK RUNNING NLY, FOR A DIST OF 448.86 FT TO A PT OF TANGENTIAL CURVE TO LEFT, RADIUS 498.94, THEN NWLY ALG SD CURVE FOR AN ARC LENGTH OF 235.95, CENTRAL ANGLE 27 DEG 05 MIN 44 SEC, THEN N 62 DEG 30 MIN 31 SEC W FOR A DIST OF 233.89 FT, THEN N 27 DEG 29 MIN 29 SEC E FOR A DIST OF 42 FT, THEN N 62 DEG 30 MIN 31 SEC W 50 FT S OF & PARA TO CENTERLINE OF BNRR TRACK RUNNING NWLY FOR A DIST OF 1388.82 FT TO A PT ON ELY R/W LN OF I-29, THEN IN A SLY & ELY DIR ALG ELY R/W LN OF SD I-29 TO TRUE PT OF BEG

Additional Description:

District Information

Cass School District: 1
 Elem. School District: Madison

Property Valuation

	Land	Improvements	Total
Current Appraised Value:	\$0.00	\$556,600.00	\$556,600.00

Building Information

Year Built:	1977	No. of Apartment Units:	
Total Building SqFt:	11187	Residential Story Height:	0 ()

Lot Size

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Front Width: 0
Back Width: 0
Depth Side 1: 0
Depth Side 2: 0

Land Use: C (Commercial)
Property Type: 12 (Automobile Repair Shop)

Zoning

Zone 1: GI

Zone 2:

Conditional Use Permit:

Planned Unit Devel #:

Planned Unit Devel Date:

Conditional Overlay Number:

Conditional Overlay Date:

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Property Information

For additional information, visit the [Assessor's Office website](#).

Parcel No ⓘ
01-1043-00040-000

Year Built ⓘ
1977

Lot Width (Front) ⓘ
955.74

Segment Number
1

Story Height (residential only) ⓘ
N/A

Lot Width (Back) ⓘ
1,622.71

Address ⓘ
3501 12 AVE N

Main Floor Sq. Ft. (residential only) ⓘ

Lot Depth (Side 1) ⓘ
1,288.47

Ownership Information ⓘ
SUPERVALU WHOLESALE OPERATIONS INC

Total Building Sq. Ft. ⓘ
303,970

Lot Depth (Side 2) ⓘ
1,593.24

School District ⓘ
1 - Fargo

Number of Apartment Units ⓘ
0

Lot Area ⓘ
2,165,651 sq. ft. (49.717 acres)

Land Use
Commercial

Special Assessment Front Footage ⓘ
942.33

Property Type
Warehouse & Office

Special Assessment Square Footage ⓘ
2,166.967

Taxes Payable

[Cass County Property Taxes](#) (This link will direct you to the Cass County website where property tax information is available.).

[View Legal Description](#)

Valuations

2021 Appraised Value
(Current Certified)

	Land	Improvements	Total
Full Appraised Value ⓘ	\$4,331,000	\$15,056,200	\$19,387,200
Net Taxable Appraised Value ⓘ	\$4,331,000	\$15,056,200	\$19,387,200

Assessment (Local, State, Exempt)
Local

2022 Proposed Appraised Value
(subject to change)

	Land	Improvements	Total
Full Appraised Value ⓘ	\$4,331,000	\$15,201,800	\$19,532,800
Net Taxable Appraised Value ⓘ	\$4,331,000	\$15,201,800	\$19,532,800

Assessment (Local, State, Exempt)
Local

Special Assessment Information

For additional information or to contact the Special Assessments Office visit the [Payment Methods webpage](#).

NOTE: For additional project details click on the project number below.

Project Number	Project Category	Current Annual Installment ⓘ	Un-Certified Balance Remaining (principal only) ⓘ	Work Complete (pending approval) ⓘ	Work in Progress (estimate only) ⓘ	Deferred Balance ⓘ
552500	Maintenance	\$755.63	\$7,055.48			
Totals:		\$755.63	\$7,055.48			

Payment Status

Principal & Interest Breakdown

Year	Principal Amount	Interest Amount	Total Payment
2021	\$376.59	\$379.04	\$755.63
2020	\$358.32	\$397.31	\$755.63
2019	\$340.93	\$414.70	\$755.63

Property Information

For additional information, visit the [Assessor's Office website](#).

Parcel No ⓘ

01-1043-00040-000

Year Built ⓘ

1977

Lot Width (Front) ⓘ

Segment Number

2

Story Height (residential only) ⓘ

N/A

Lot Width (Back) ⓘ

Address ⓘ

N/A

Main Floor Sq. Ft. (residential only) ⓘ

Lot Depth (Side 1) ⓘ

Ownership Information ⓘ

SUPERVALU WHOLESALE OPERATIONS INC

Total Building Sq. Ft. ⓘ

11,187

Lot Depth (Side 2) ⓘ

School District ⓘ

1 - Fargo

Number of Apartment Units ⓘ

0

Lot Area ⓘ

Land Use

Commercial

Special Assessment Front Footage ⓘ

942.33

Property Type

Automobile Repair Shop

Special Assessment Square Footage ⓘ

2,166.967

Taxes Payable

[Cass County Property Taxes](#) (This link will direct you to the Cass County website where property tax information is available.).

[View Legal Description](#)

Valuations

2021 Appraised Value
(Current Certified)

	Land	Improvements	Total
Full Appraised Value ⓘ	\$0	\$556,600	\$556,600
Net Taxable Appraised Value ⓘ	\$0	\$556,600	\$556,600

Assessment (Local, State, Exempt)

Local

2022 Proposed Appraised Value
(subject to change)

	Land	Improvements	Total
Full Appraised Value ⓘ	\$0	\$556,600	\$556,600
Net Taxable Appraised Value ⓘ	\$0	\$556,600	\$556,600

Assessment (Local, State, Exempt)

Local

Special Assessment Information

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552500	Maintenance	\$755.63	\$7,055.48			
Totals:		\$755.63	\$7,055.48			

Payment Status

Principal & Interest Breakdown

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2021	\$376.59	\$379.04	\$755.63
2020	\$358.32	\$397.31	\$755.63
2019	\$340.93	\$414.70	\$755.63

Assessments

Year	Agricultural	Residential		Commercial		Total	Taxable Value Before Credits	Credits	Net Taxable Value
	Land	Land	Building	Land	Building				
<u>2021</u>	\$0.00	\$0.00	\$0.00	\$4,331,000.00	\$15,612,800.00	\$19,943,800.00	\$997,190.00	<u>\$0.00</u>	\$997,190.00
<u>2020</u>	\$0.00	\$0.00	\$0.00	\$4,331,000.00	\$13,476,000.00	\$17,807,000.00	\$890,350.00	<u>\$0.00</u>	\$890,350.00
<u>2019</u>	\$0.00	\$0.00	\$0.00	\$4,331,000.00	\$13,476,000.00	\$17,807,000.00	\$890,350.00	<u>\$0.00</u>	\$890,350.00
<u>2018</u>	\$0.00	\$0.00	\$0.00	\$2,274,000.00	\$14,421,300.00	\$16,695,300.00	\$834,765.00	<u>\$0.00</u>	\$834,765.00
<u>2017</u>	\$0.00	\$0.00	\$0.00	\$2,274,000.00	\$13,950,000.00	\$16,224,000.00	\$811,200.00	<u>\$0.00</u>	\$811,200.00
<u>2016</u>	\$0.00	\$0.00	\$0.00	\$2,274,000.00	\$13,950,000.00	\$16,224,000.00	\$811,200.00	<u>\$0.00</u>	\$811,200.00
<u>2015</u>	\$0.00	\$0.00	\$0.00	\$2,274,000.00	\$13,454,900.00	\$15,728,900.00	\$786,445.00	<u>\$0.00</u>	\$786,445.00

Sales Comparison Grid

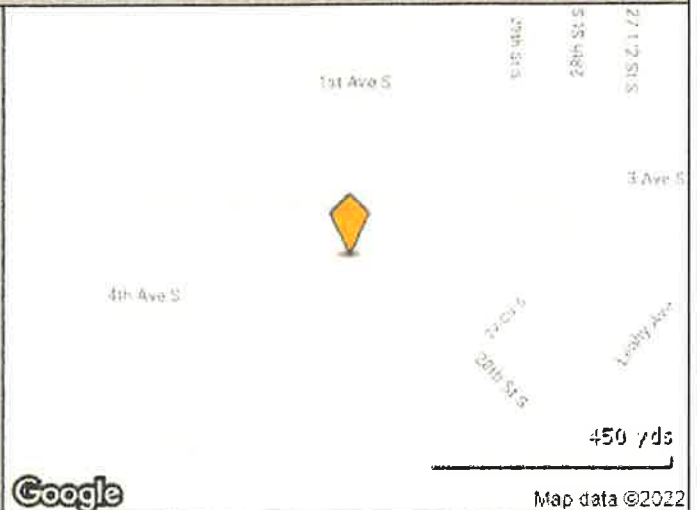


UNFI
Comparable Building Sales/Assessments
3501 12th Avenue, Fargo, North Dakota

Sale No.	1	2	3	4	5	Subject Property
PROPERTY INFORMATION:						
Land Area - SF:	160,153	328,878	1,889,633	3,995,154	177,289	2,137,925
Land Area - Acres:	3.68	7.55	43.38	89.65	4.07	49.08
Gross Building Area - SF:	57,600	98,750	143,620	299,379	50,500	315,157
Land/Building Ratio:	2.78	3.33	13.16	13.04	3.51	6.78
Clear Height:	14.00-16.00	19.00-28.50	18.00-34.00	39.00	16.00	18.00-29.00
Year Built:	1989	1999 (Renovated 2005)	2002	1988	1995	1977
Stories:	1	1	1	1	1	1
Exterior Wall Construction:	Metal	Steel	Reinforced Concrete	Metal	Metal	Precast/Steel
Sale Price:	\$2,400,461	\$3,500,000	\$5,750,000	\$8,350,000	\$1,751,000	\$20,089,400
Price PSF:	\$41.67	\$35.44	\$40.04	\$27.89	\$34.67	\$63.74
Sale Terms:		Cash	Cash	Cash	Cash	
SALE COMP ANALYSIS:						
Sale Price Net of excess Land (County Valuation):	\$2,400,461	\$3,500,000	\$5,750,000	\$8,350,000	\$1,751,000	\$20,089,400
Price/SF of GBA:	\$41.67	\$35.44	\$40.04	\$27.89	\$34.67	\$63.74
Time Adjustment:						
Sale Date:	Oct-19	Jun-19	Jan-21	Mar-21	Aug-21	Jan-21
Months Since Sale:	0			2	7	0
Time Adjustment Ratio:	0.95	0.95	1.00	1.00	1.00	1.00
Time Adjusted Price PSF:	\$39.59	\$33.67	\$40.04	\$27.89	\$34.67	\$63.74
Other Adjustments When Compared to Subject:						
Quality of Construction/Design:	Interior	Interior	Equal	Interior	Interior	
Age/Condition:	Equal	Superior	Superior	Equal	Superior	
Building Size:	Superior	Superior	Superior	Equal	Superior	
Land/Building Ratio:	Interior	Interior	Superior	Superior	Interior	
Location:	Equal	Equal	Equal	Equal	Equal	
Net Adjustment Percentage:	0%	0%	-10%	5%	0%	
Adjustment Factor:	1.00	1.00	0.90	1.05	1.00	
Adjusted Price PSF (County Valuation):	\$39.59	\$33.67	\$36.03	\$29.29	\$34.67	\$0.00
				Low	\$29.29	
				High	\$39.59	
				Average	\$34.65	\$10,920,397.88
				Median	\$34.67	\$10,927,572.91

3175 4th Ave S**SOLD****Fargo, ND 58103**

Sale on 10/9/2019 for \$2,400,461 (\$41.67/SF) - Research Complete (Part of Multi-Property)
 57,600 SF Class C Warehouse Building Built in 1989

**Buyer & Seller Contact Info**Recorded Buyer: **Fargo Lumber LLC**True Buyer: **Hyde Development****Paul Hyde**

800 Lasalle Ave
 Minneapolis, MN 55402
 (612) 904-1513

Buyer Type: **Developer/Owner-RGNL**Buyer Broker: **No Buyer Broker on Deal**Recorded Seller: **Lavelle Properties LLC**True Seller: **Patcick Lavelle****Patrick Lavelle**

1348 8th St S
 Fargo, ND 58103
 (701) 293-6501

Seller Type: **Individual**Listing Broker: **No Listing Broker on Deal****Transaction Details**

ID: 4931653

Sale Date: **10/09/2019**Escrow Length: **-**Sale Price: **\$2,400,461-Allocated**Asking Price: **-**Price/SF: **\$41.67**Price/AC Land Gross: **\$652,902.41**Sale Type: **Investment**Bldg Type: **Warehouse**Year Built/Age: **Built in 1989 Age: 30**RBA: **57,600 SF**Land Area: **3.68 AC (160,153 SF)**Percent Leased: **100.0%**Tenancy: **Single**Sale Conditions: **Redevelopment Project**Legal Desc: **UNPLATTED 11-139-49 PT OF NW1/4 OF NE1/4 OF SEC 11**

3175 4th Ave S		SOLD
57,600 SF Class C Warehouse Building Built in 1989 (con't)		
Transaction Notes		
<p>On 10/9/2019, the three property portfolio of industrial buildings totaling 136,000 sf at 115 31st St S, 3101 4th Ave S, and 3175 4th Ave S, Fargo, ND 58103 were sold for \$5,876,000 or \$43.21 per square foot. The properties were occupied by Parksite at the time of sale, who have approximately 6 years left on their lease with an option to renew for another five years.</p> <p>The property was sold in an off market transaction with an undisclosed initial asking price.</p> <p>The buyer was attracted to this site as a future redevelopment and expansion of the Butler Business Park (where projects recently delivered as recently as 2016 - a 125,000 square foot warehouse at 3500 Main Ave and a 65,000 square foot building at 100 36th St S). They liked these properties due to the infill site and that the parcels were large enough to develop industrial buildings of similar size.</p> <p>The sale date, sale price, square footage, and potential redevelopment project conditions were verified with the buyer.</p> <p>The deed was unavailable at the time of publication.</p>		
Income Expense Data		
Expenses	- Taxes	\$31,314
	- Operating Expenses	
	Total Expenses	\$31,314
Current Industrial Information		ID: 11240324
Bldg Type: Warehouse Bldg Status: Built in 1989 Rent/SF/Yr: - Bldg Vacant: 0 SF Building FAR: 0.36 Office Avail: 0 SF Max Contig: - Smallest Space: - Land Area: 3.68 AC Lot Dimensions: - Ceiling Height: 14'0"-18'0" Loading Docks: 1 ext (bldg. total) Cross Docks: No Drive Ins: 3 (total) Sprinklers: Yes Rail Line: None Expenses: 2020 Tax @ \$0.55/sf	RBA: 57,600 SF % Leased: 100.0% Stories: 1 Total Avail: 0 SF Warehouse Avail: 0 SF CAM: - Zoning: LI Owner Type: Developer/Owner-RGNL Owner Occupied: No Tenancy: Single Column Spacing: - Levelators: - Crane: - Const Type: Metal Rail Spots: Yes	
Parking: 26 Surface Spaces are available; Ratio of 0.45/1,000 SF		
Location Information		
County: Cass CBSA: Fargo, ND-MN CSA: Fargo-Wahpeton, ND-MN DMA: Fargo-Valley City, ND-MN		

3175 4th Ave S

SOLD

57,600 SF Class C Warehouse Building Built in 1989 (con't)

Parcel Number: -
Legal Description: -
County: **Cass**

Plat Map: 3175 4th Ave S



7251 S 42nd St**SOLD****Grand Forks, ND 58201**

Sale on 6/25/2019 for \$3,500,000 (\$35.44/SF) - Research Complete
98,750 SF Class B Manufacturing Building Built in 1999, Renov 2006

**Buyer & Seller Contact Info****Recorded Buyer:** Paragon Pro Holding Llc**True Buyer:** Trent A Baumer

Trent Baumer

7251 S 42nd St

Grand Forks, ND 58201

(218) 643-3160

Buyer Type: Individual**Recorded Seller:** Oakwood Associates Llp**True Seller:** Roland Young

Roland Young

5950 E Lake Dr

Grand Forks, ND 58201

(701) 772-1690

Seller Type: Individual**Transaction Details****ID: 4832798****Sale Date:** 06/25/2019**Escrow Length:** -**Sale Price:** \$3,500,000-Confirmed**Asking Price:** -**Price/SF:** \$35.44**Price/AC Land Gross:** \$463,576.16**Percent Leased:** 100.0%**Tenancy:** Single**Sale Type:** Investment**Bldg Type:** Manufacturing**Year Built/Age:** Built in 1999, Renov 2006 Age: 20**RBA:** 98,750 SF**Land Area:** 7.55 AC (328,878 SF)**Percent Improved:** 97.8%**Total Value Assessed:** \$3,580,800 in 2018**Improved Value Assessed:** \$3,501,900**Land Value Assessed:** \$78,900**Land Assessed/AC:** \$10,450**Parcel No:** 17550200001000, 17550200001005**Document No:** 000000793131

7251 S 42nd St

SOLD

98,750 SF Class B Manufacturing Building Built in 1999, Renov 2006 (con't)

Transaction Notes

On 6/25/2019, this 98,750 SF Industrial space was sold for \$3,500,000 or \$35.44 per SF. The building, located just outside of Grand Forks ND was built in 1999 and renovated in 2006. The purchase was financed through two loans totaling \$2,986,900. No brokers were involved in the sale.

The purchasers of the property say 20% of the building is already occupied by a tenant who is using the space for light manufacturing. The new owners plan on renting a further 10% of the building as an office. The owners will use the remaining 70% of the space for their own business.

The square footage, price, and intended use of the space were verified by the purchasing party.

Income Expense Data

Expenses	- Taxes	\$112
	- Operating Expenses	
	Total Expenses	\$112

Current Industrial Information

ID: 6883936

Bldg Type:	Manufacturing	RBA:	98,750 SF
Bldg Status:	Built in 1999, Renov 2006	% Leased:	100.0%
Rent/SF/Yr:	-	Stories:	1
Bldg Vacant:	0 SF	Total Avail:	0 SF
Building FAR:	0.30	Warehouse Avail:	0 SF
Office Avail:	0 SF	CAM	-
Max Contig:	-	Zoning:	I
Smallest Space:	-	Owner Type:	Individual
Land Area:	7.55 AC	Owner Occupied:	No
Lot Dimensions:	-	Tenancy:	Single
Ceiling Height:	19'0"-28'5"	Column Spacing:	-
Loading Docks:	2 ext (bldg. total)	Levelators:	-
Cross Docks:	-	Crane:	-
Drive Ins:	9 (total)	Const Type:	Steel
Sprinklers:	Yes	Rail Spots:	-
Rail Line:	None		
Expenses:	2020 Tax @ \$0.00/sf		
Utilities:	Gas, Water		

Location Information

County: Grand Forks
 CBSA: Grand Forks, ND-MN
 DMA: Fargo-Valley City, ND-MN

5000 Demers Ave**SOLD**

Grand Forks, ND 58201

Sale on 1/4/2021 for \$5,750,000 (\$40.04/SF)

143,620 SF Class C Warehouse Building Built in 2002

**Buyer & Seller Contact Info**

Recorded Buyer: Contractors Leasing

True Buyer: Kost Materials

Jeff Eberhardt

3950 37th Ave S

Fargo, ND 58106

(701) 367-1759

Buyer Type: Other - Private

Buyer Broker: No Buyer Broker on Deal

Recorded Seller: Mndak Concrete Inc

True Seller: Mndak Concrete Inc

Robert Sween

5000 Demers Ave

Grand Forks, ND 58201

(701) 772-6687

Seller Type: Other - Private

Listing Broker: Dakota Commercial

Curtis Regan

(701) 772-3101

Transaction Details**ID: 5380485**

Sale Date: 01/04/2021 (307 days on market)

Escrow Length: -

Sale Price: \$5,750,000-Confirmed

Asking Price: \$8,500,000

Price/SF: \$40.04

Price/AC Land Gross: \$132,549.56

Percent Leased: 100.0%

Parcel No: 44136200001000

Sale Type: Investment

Bldg Type: Warehouse

Year Built/Age: Built in 2002 Age: 19

RBA: 143,620 SF

Land Area: 43.38 AC (1,889,633 SF)

Transaction Notes

On 1/4/21 MNDACK Concrete Inc sold the industrial property to Contractors Leasing for \$5,750,000 or \$40.04 per square foot. Dakota Commercial represented the sellers and the buyers represented themselves.

The subject property is a 143,620 square foot, Class C, industrial building located at 5000 Demers Ave, Grand Forks, ND 58201.

The details of this sales comparable were confirmed with the listing broker.

The deed was unavailable at the time of publication.

5000 Demers Ave

SOLD

143,620 SF Class C Warehouse Building Built in 2002 (con't)

Current Industrial Information

ID: 11333725

Bldg Type:	Warehouse	RBA:	143,620 SF
Bldg Status:	Built in 2002	% Leased:	100.0%
Rent/SF/Yr:	-	Stories:	1
Bldg Vacant:	0 SF	Total Avail:	0 SF
Building FAR:	0.08	Warehouse Avail:	0 SF
Office Avail:	0 SF	CAM	-
Max Contig:	-	Zoning:	Heavy Industrial
Smallest Space:	-	Owner Type:	Other - Private
Land Area:	43.38 AC	Owner Occupied:	No
Lot Dimensions:	-	Tenancy:	Multi
Ceiling Height:	-	Column Spacing:	-
Loading Docks:	None (bldg. total)	Levelators:	None
Cross Docks:	-	Crane:	None
Drive Ins:	24 (total)	Const Type:	Reinforced Concrete
Sprinklers:	-	Rail Spots:	None
Rail Line:	None		
Expenses:	2020 Tax @ \$1.04/sf		

Location Information

County: Grand Forks
 CBSA: Grand Forks, ND-MN
 DMA: Fargo-Valley City, ND-MN

5000 Demers Ave

SOLD

143,620 SF Class C Warehouse Building Built in 2002 (con't)

Parcel Number: 44136200001000
Legal Description: -
County: Grand Forks

Plat Map: 5000 Demers Ave



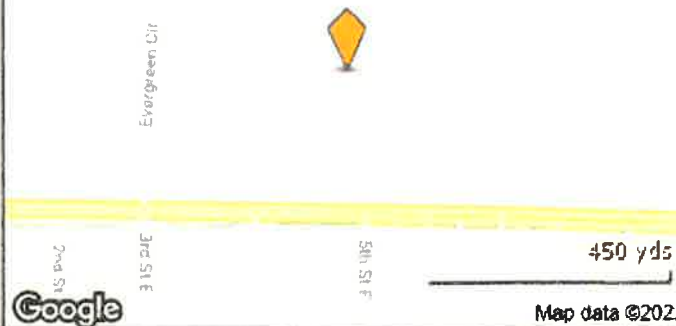
420 Main Ave E - West Fargo Industrial Park**SOLD**

West Fargo Industrial Park

West Fargo, ND 58078

Sale on 3/31/2021 for \$8,350,000 (\$27.89/SF) - Research Complete

299,379 SF Class C Warehouse Building Built in 1988



Map data ©2022

Buyer & Seller Contact Info

Recorded Buyer: Lindy Investments, LLC

True Buyer: Tyler Brandt

Tyler Brandt

4265 45th St S

Fargo, ND 58104

(701) 205-3548

Buyer Type: Individual

Buyer Broker: No Buyer Broker on Deal

Recorded Seller: Trinity Containers, LLC

True Seller: Arcosa Inc.

500 N Akard St

Dallas, TX 75201

(972) 544-5900

Seller Type: Corporate/User

Listing Broker: Binswanger

Zachary Binswanger

(312) 655-9526

Property Resources Group

Dan Hicks

(701) 499-3911

Transaction Details

ID: 5449424

Sale Date: 03/31/2021 (77 days on market)

Escrow Length: -

Sale Price: \$8,350,000-Confirmed

Asking Price: \$9,200,000

Price/SF: \$27.89

Price/AC Land Gross: \$93,139.99

Percent Leased: 100.0%

Tenancy: Single

Sale Type: Owner User

Bldg Type: Warehouse

Year Built/Age: Built in 1988 Age: 33

RBA: 299,379 SF

Land Area: 89.65 AC (3,905,154 SF)

Percent Improved: 90.9%

Total Value Assessed: \$11,599,200 in 2019

Improved Value Assessed: \$10,547,600

Land Value Assessed: \$1,051,600

Land Assessed/AC: \$11,730

Parcel No: 02-3920-00020-000

420 Main Ave E - West Fargo Industrial Park**SOLD**

299,379 SF Class C Warehouse Building Built in 1988 (con't)

Transaction Notes

On March 31st 2021, the 299,379 square foot Industrial Building at 420 Main Avenue in West Fargo, ND was sold for \$8,350,000.

The property was on the market for approximately two months with an initial asking price of \$9,200,000.

The date of sale, price, size and sale type were confirmed with the listing broker.

Current Industrial Information

ID: 11575445

Bldg Type:	Warehouse	RBA:	299,379 SF
Bldg Status:	Built in 1988	% Leased:	100.0%
Rent/SF/Yr:	-	Stories:	1
Bldg Vacant:	0 SF	Total Avail:	0 SF
Building FAR:	0.08	Warehouse Avail:	0 SF
Office Avail:	0 SF	CAM	-
Max Contig:	-	Zoning:	C
Smallest Space:	-	Owner Type:	Individual
Land Area:	89.65 AC	Owner Occupied:	Yes
Lot Dimensions:	-	Tenancy:	Single
Ceiling Height:	39'0"	Column Spacing:	25'w
Loading Docks:	2 ext (bldg. total)	Levelators:	-
Cross Docks:	No	Crane:	13/1-40 tons
Drive Ins:	26 (total)	Const Type:	-
Sprinklers:	Wet	Rail Spots:	Yes
Rail Line:	None		
Expenses:	2020 Tax @ \$0.67/sf		
Power:	400a		
Utilities:	Gas, Heating, Lighting, Sewer, Water		
Parking:	Ratio of 0.00/1,000 SF		

Location Information

Park Name: West Fargo Industrial Park
 County: Cass
 CBSA: Fargo, ND-MN
 CSA: Fargo-Wahpeton, ND-MN
 DMA: Fargo-Valley City, ND-MN

2250 Mill Rd**SOLD****Grand Forks, ND 58203**

Sale on 8/31/2021 for \$1,590,000 (\$31.49/SF) - Research Complete
50,500 SF Class B Manufacturing Building Built in 1995

**Buyer & Seller Contact Info**

Recorded Buyer: Red River Potatoes LLC
True Buyer: Mesa Verde Trading Co., Inc.
 2513 W Shaw Ave
 Fresno, CA 93711
 (559) 276-2855
Buyer Type: Corporate/User
Buyer Broker: No Buyer Broker on Deal

Recorded Seller: Ingredion Inc
True Seller: Ingredion Incorporated
 5 Westbrook Corporate Ctr
 Westchester, IL 60154
 (708) 551-2600
Seller Type: Corporate/User
Listing Broker: NAI Legacy
 Michael Houge
 (701) 645-1057

Transaction Details**ID: 5706201**

Sale Date: 08/31/2021 (84 days on market)	Sale Type: Owner User
Escrow Length: -	Bldg Type: Manufacturing
Sale Price: \$1,590,000-Confirmed	Year Built/Age: Built in 1995 Age: 26
Asking Price: \$2,000,000	RBA: 50,500 SF
Price/SF: \$31.49	Land Area: 4.07 AC (177,289 SF)
Price/AC Land Gross: \$390,663.39	
Percent Leased: 100.0%	
	Percent Improved: 88.8%
	Total Value Assessed: \$1,751,000 in 2020
	Improved Value Assessed: \$1,554,900
	Land Value Assessed: \$196,100
	Land Assessed/AC: \$48,181

Parcel No: 44170500011001

2250 Mill Rd**SOLD**

50,500 SF Class B Manufacturing Building Built in 1995 (con't)

Transaction Notes

On 1.79 million; the 50,500 SF building at 2250 Mill Rd sold for \$1,590,000, or \$31.49 per square foot. The property is zoned I-2, and was vacant at the time of sale. The class B industrial building was constructed in 1995, and is situated on 4.07 acres of land.

The property was on the market for four months, with an initial asking price of \$2,000,000.

The buyer was drawn to the property by its size, as all the necessary equipment would fit in the building.

The sale price, date, parties involved, and building and sale information were verified by the listing broker. The sale price, date, building information and buyer motivation were verified by the buyer.

Current Industrial Information

ID: 12268619

Bldg Type:	Manufacturing	RBA:	50,500 SF
Bldg Status:	Built in 1995	% Leased:	100.0%
Rent/SF/Yr:	-	Stories:	1
Bldg Vacant:	0 SF	Total Avail:	0 SF
Building FAR:	0.28	Warehouse Avail:	0 SF
Office Avail:	0 SF	CAM	-
Max Contig:	-	Zoning:	I-2
Smallest Space:	-	Owner Type:	Corporate/User
Land Area:	4.07 AC	Owner Occupied:	Yes
Lot Dimensions:	-	Tenancy:	Single
Ceiling Height:	16'0"	Column Spacing:	-
Loading Docks:	1 int (bldg. total)	Levelators:	-
Cross Docks:	No	Crane:	-
Drive Ins:	5 (total)	Const Type:	Steel
Sprinklers:	-	Rail Spots:	Yes
Rail Line:	None		
Expenses:	2020 Tax @ \$0.55/sf		
Power:	Heavy		
Utilities:	Gas - Natural, Heating, Lighting, Sewer - City, Water - City		
Features:	Fenced Lot, Floor Drains, Signage, Storage Space, Yard		

Location Information

County: Grand Forks
 CBSA: Grand Forks, ND-MN
 DMA: Fargo-Valley City, ND-MN

Income Value Approach

UNFI

3501 12th Avenue, Fargo, ND

Estimated Market Value as of January 1, 2020

Potential Gross Income							
Space	SF Amount	% of Total	Est. Market Net Rent \$/SF	Operating Expenses \$/SF	Tax Expense \$/SF	Gross Rent \$/SF	Estimated Total Gross Annual Rent
3501 12th Avenue, Fargo, ND	315,157	100.00%	\$ 5.00	\$ 2.56	\$ 0.92	\$ 8.48	\$ 2,672,531
	-	0.00%	\$ -	\$ -	\$ -	\$ -	\$ -
	-		\$ -	\$ -	\$ -	\$ -	\$ -
Potential Gross Income	315,157	100%	\$ 5.00	\$ 2.56	\$ 0.92	\$ 8.48	\$ 2,672,531

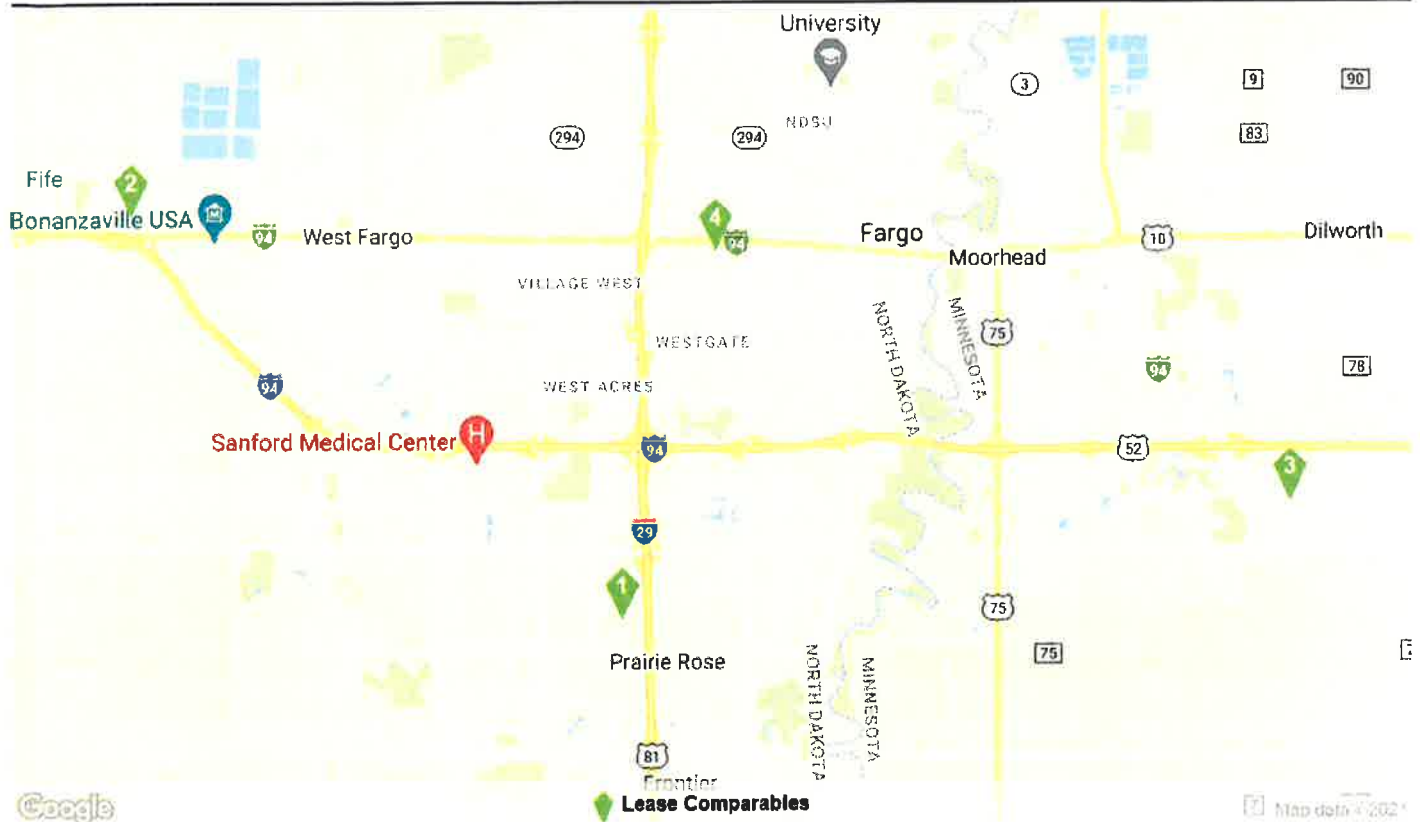
		Ratio % of PGI		PSF	Pro-Forma Iteration
INCOME					
Potential Gross Income					
Rental Income Suites		100%	\$	8.48	\$ 2,672,531
Less: Vacancy Expense		-4.5%	\$	(0.38)	\$ (120,264)
Plus: Other Collected Income		0%		\$0.00	\$0.00
Effective Gross Income		95.50%	\$	8.10	\$ 2,552,267
		Ratio % of PGI		PSF	Pro-Forma Iteration
EXPENSES					
Operating Costs					
Real Estate Taxes (Iterated)	1.44367% effective tax rate	10.85%	\$	(0.92)	\$ (289,944)
General Expenses & CAM		30.19%	\$	(2.56)	\$ (806,802)
Management Fee - Reimbursable		5.00%	\$	(0.40)	\$ (127,613)
Non-Recoverable Expenses		1.18%	\$	(0.10)	\$ (31,516)
Replacement Reserves		2.95%	\$	(0.25)	\$ (78,789)
Total Expense		50.17%	\$	(4.23)	\$ (1,334,665)
Net Operating Income		49.83%	\$	3.86	\$ 1,217,603
Overall Capitalization Rate					8.40%
Effective Tax Rate					0.00%
					8.40%
				\$	14,495,271
Value Estimate Via Income Approach				Rounded:	\$ 14,496,000
Less: Deferred Maintenance					0
Less: Personal Property					0
Estimated Market Value As of January 2, 2020 - Fee Simple					\$ 14,496,000
				\$/SF	\$ 46.00

Lease Comps Summary

Lease Comps Report

Deals	Asking Rent Per SF	Starting Rent Per SF	Avg. Months On Market
4	\$5.55	\$5.00	24

LEASE COMPARABLES



SUMMARY STATISTICS

Rent	Deals	Low	Average	Median	High
Asking Rent Per SF	4	\$5.00	\$5.55	\$5.68	\$6.50
Starting Rent Per SF	1	\$5.00	\$5.00	\$5.00	\$5.00
Effective Rent Per SF	1	\$5.00	\$5.00	\$5.00	\$5.00
Asking Rent Discount	1	0.0%	0.0%	0.0%	0.0%
TI Allowance	-	-	-	-	-
Months Free Rent	-	-	-	-	-





Lease Attributes	Deals	Low	Average	Median	High
Months on Market	4	2	24	19	56
Deal Size	4	28,000	49,000	39,000	90,000
Lease Deal in Months	2	36.0	48.0	48.0	60.0
Floor Number	4	1	1	1	1

Lease Comps Summary

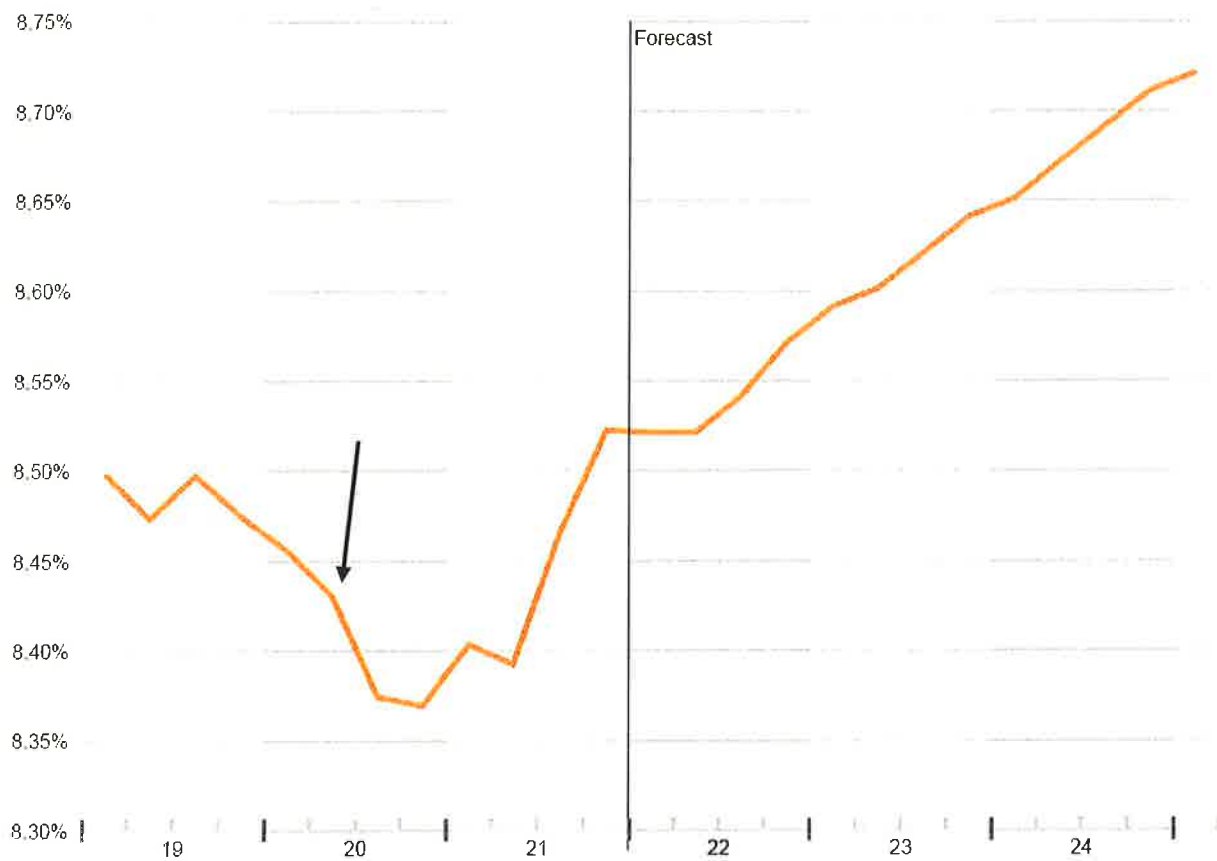
Lease Comps Report

	Property Name - Address	Rating	Lease				Rents	
			SF Leased	Floor	Sign Date	Type	Rent	Rent Type
1	3600 39th St S	★★★★☆	30,000	1st	6/1/2021	New	\$6.50/nnn	Asking
2	Dock 99 2521 3rd Ave	★★★★☆	48,000	1st	5/18/2021	New	\$6.25/fs	Asking
3	3340 42nd St S	★★★★★	28,000	1st	4/14/2020	New	\$5.10/nnn	Asking
4	65 28th St S	★★★☆☆	90,000	1st	2/6/2020	New	\$5.00/nnn	Effective

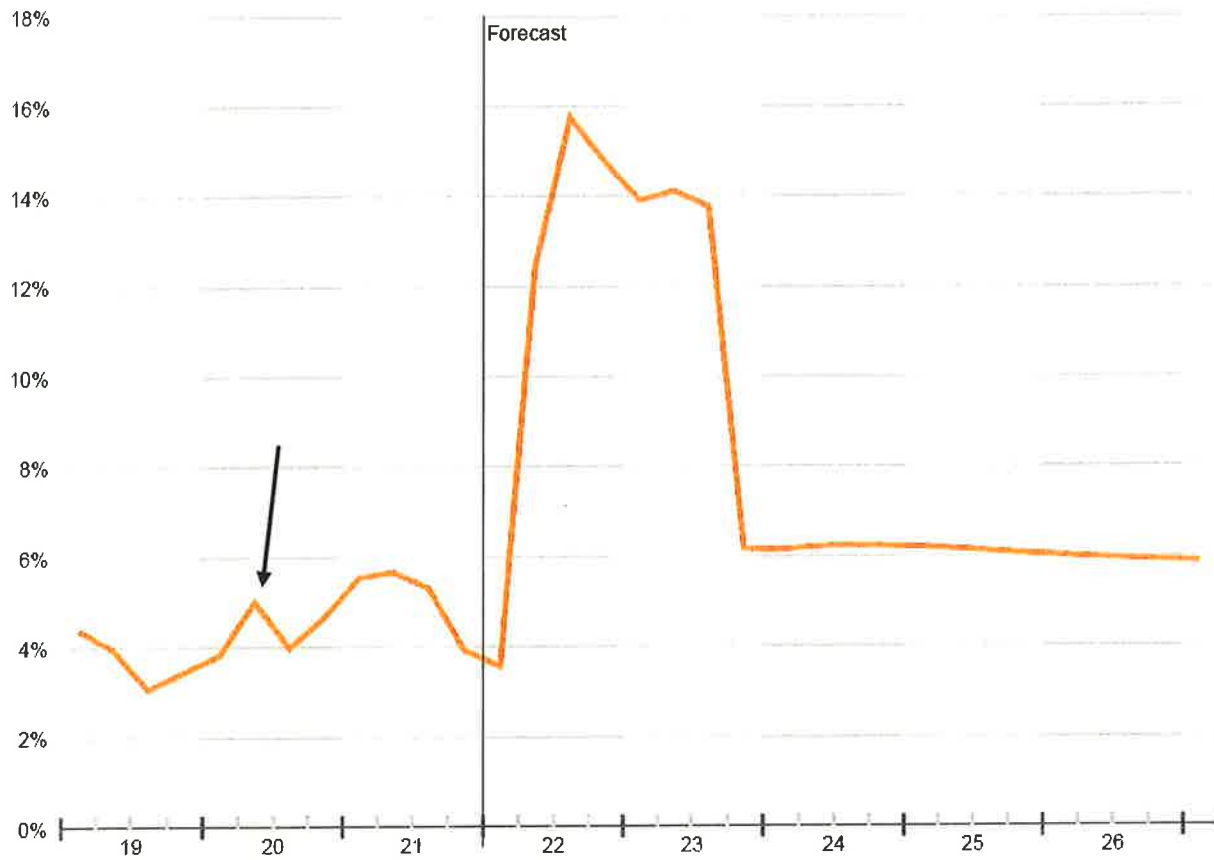
Lease Comparables

	Address	Tenant Landlord	SF Leased Type	StartDate Term	Starting Rent Effective Rent	Free Rent TI Allow	Escalations Expenses
	3600 39th St S Fargo, ND 58104	XPO Logistics Larkin Properties Llp	30,000 New Direct	Jun 2021			
	Dock 99 2521 3rd Ave West Fargo, ND 58078 <i>Fargo Submarket</i>	Trail King Industries, Inc.	48,000 New Direct	Oct 2021			
	3340 42nd St S Moorhead, MN 56560 <i>Fargo Submarket</i>	Konrad Olson Commercial Real Es...	28,000 New Direct	Nov 2022 3 Years			
	65 28th St S Fargo, ND 58103 <i>Fargo Submarket</i>	Midwest Express Kjos Investments	90,000 New Direct	Jul 2020 5 Years	\$5.00/NNN \$5.00/NNN		

Market Cap Rate



Vacancy Rate



Conclusion

Sales Comparison Value:	\$10,920,397 (\$34.65 PSF)
Income Approach Value:	\$14,496,000 (\$46.00 PSF)
Average Value:	\$12,708,198 (\$40.32 PSF)

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2/23/22
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APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
SFN 9338 (04-2020)

Applying for (check one)
☒ Local Permit ☐ Restricted Event Permit*
 Games to be Conducted
☐ Bingo ☒ Raffle ☐ Raffle Board ☐ Calendar Raffle ☐ Sports Pool ☐ Poker* ☐ Twenty-One* ☐ Paddlewheels*
 *Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit allowed per year.

Name of Organization or Group of People permit is issued to <u>St. Joseph's School</u>	Dates of Activity <u>3/19/2022</u>	If raffle, provide drawing date <u>3/19/2022</u>	
Organization or Group Contact Person <u>HEIDI HUUS</u>	Title or Position <u>Office Manager</u>	Telephone Number <u>218-233-0553</u>	
Business Address <u>1005 2nd Ave. S.</u>	City <u>Moorhead</u>	State <u>MN</u>	ZIP Code <u>56000</u>
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) <u>Avalon Event Center</u>			
Site Address <u>2525 9th Ave. S.</u>	City <u>Fargo</u>	ZIP Code <u>ND</u>	County <u>Cass</u>

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
50/50 Raffle	50% of what's collected	\$750.00
Raffle	Wagon(s) with alcohol	\$400.00

Total (limit \$40,000 per year)

\$1,150.00

Intended Uses of Gaming Proceeds

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

☐ Yes ☒ No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? (If yes, the organization or group does not qualify for a local permit or restricted event permit)

☐ Yes ☒ No

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded)

☒ No ☐ Yes - Total Retail Value: _____ (This amount is part of the total prize limit of \$40,000 per year)

Organization or Group Contact Person

Name <u>HEIDI HUUS</u>	Title <u>Office Manager</u>	Telephone Number <u>218-233-0553</u>	E-mail Address <u>hhuus@stjosephsschool.com</u>
Signature of Organization or Group's Top Official <u>[Signature]</u>		Title <u>Panish Administrator</u>	Date <u>22 Feb 2022</u>

**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

LICENSING SECTION

SFN 9338 (04-2020)

525.00
CC
3-1-22
L6b

Applying for (check one)

☒ Local Permit☐ Restricted Event Permit*

Games to be Conducted

☐ Bingo☐ Raffle☒ Raffle Board☐ Calendar Raffle☐ Sports Pool☐ Poker*☐ Twenty-One*☐ Paddlewheels*Poker, Twenty-One, and Paddlewheels may be conducted **Only** with a Restricted Event Permit. Only one permit allowed per year.

Name of Organization or Group of People permit is issued to North Dakota State University Saddle and Sirloin	Dates of Activity April 13th, 2022	If raffle, provide drawing date April 13th, 2022	
Organization or Group Contact Person Kasi Holm	Title or Position Fundraising Chair	Telephone Number 701-535-1318	
Business Address Department of Animal Sciences NDSU Dept 7630 PO Box 6050	City Fargo	State ND	ZIP Code 58108-6050
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) Shepperd Arena			
Site Address 1350 Albrecht Blvd	City Fargo	ZIP Code 58105	County Cass

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle/Fundraiser	Half of the money collected will be rewarded to ticket holder, half will be rewarded to selected fundraiser recipient (DeAnna)	700 \$5,000

Total (limit \$40,000 per year)

~~700~~ \$5,000

Intended Uses of Gaming Proceeds

Half of the money raised is rewarded to ticket holder, other half is rewarded to fundraiser recipient.

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

☐ Yes ☒ No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? (If yes, the organization or group does not qualify for a local permit or restricted event permit)

☐ Yes ☒ No

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded)

☒ No☐ Yes - Total Retail Value:

(This amount is part of the total prize limit of \$40,000 per year)

Organization or Group Contact Person

Name Kasi Holm	Title Fundraising Chair	Telephone Number 701-535-1318	E-mail Address kasi.holm@ndsu.edu
Signature of Organization or Group's Top Official <i>Kasi Holm</i>		Title Fundraising Chair	Date 02/15/2022



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 LICENSING SECTION
 SFN 9338 (04-2020)

Cash
 3/2/22
 (6c)

Applying for (check one)

☒ Local Permit ☐ Restricted Event Permit*

Games to be Conducted

☐ Bingo ☒ Raffle ☐ Raffle Board ☐ Calendar Raffle ☐ Sports Pool ☐ Poker* ☐ Twenty-One* ☐ Paddlewheels*

Poker, Twenty-One, and Paddlewheels may be conducted **Only** with a Restricted Event Permit. Only one permit allowed per year.

Name of Organization or Group of People permit is issued to NDSU Sigma Alpha Professional Agricultural Sorority		Dates of Activity 3/14/22 to 3/26/22		If raffle, provide drawing date 3/26/2022	
Organization or Group Contact Person Kya Anderson		Title or Position Fundraising Chair		Telephone Number (701) 871-0101	
Business Address PO Box 6050 Dept. 2873		City Fargo		State ND	ZIP Code 58108
Mailing Address (if different)		City		State	ZIP Code
Site Name (where gaming will be conducted) Avalon Event Center					
Site Address 2525 9th Ave S		City Fargo		ZIP Code ND	County Cass

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	Winter Basket	\$ 250.00

Total (limit \$40,000 per year)

Intended Uses of Gaming Proceeds

The funds will be used for various budget items such as chapter trips, events, & fellowships.

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

☐ Yes ☒ No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? (If yes, the organization or group does not qualify for a local permit or restricted event permit)

☐ Yes ☒ No

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded)

☒ No ☐ Yes - Total Retail Value: (This amount is part of the total prize limit of \$40,000 per year)

Organization or Group Contact Person

Name Katherine Filler	Title President	Telephone Number 701-777-8081	E-mail Address Katherine.Filler@ndsu.edu
Signature of Organization or Group's Top Official Katherine Filler		Title President	Date 3-2-22

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-14-71 (6228)

Type: Amendment #2

Location: Drain 27

Date of Hearing: 2/28/2022

Routing

City Commission

PWPEC File

Project File

Date3/7/2022XJody Bertrand

(7)

The Committee reviewed the accompanying correspondence from Division Engineer, Jody Bertrand, related to Amendment #2 in the amount of \$265,600.00. This amendment is for engineering services including completion of design, rebidding, and construction administration.

Staff is recommending approval of Amendment #2 in the amount of \$265,600.00, bringing the total contract amount to \$932,914.00.

On a motion by Kent Costin, seconded by Steve Sprague, the Committee voted to recommend approval of Amendment #2 to Houston Engineering.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Amendment #2 in the amount of \$265,600.00, bringing the total contract amount to \$932,914.00 to Houston Engineering.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax (460)

Developer meets City policy for payment of delinquent specials
 Agreement for payment of specials required of developer
 Letter of Credit required (per policy approved 5-28-13)

Yes No

N/A

N/A

N/A


COMMITTEE

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Bruce Grubb, City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Brenda Derrig, City Engineer
 Kent Costin, Finance Director

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Brenda E. Derrig, P.E.
 City Engineer

Memorandum

To: PWPEC

From: Jody Bertrand, Division Engineer

Date: 2/28/2022

Re: Project No. FM-14-72 (6228) – Drain 27 Flood Risk Management Project
Contract Amendment #2 Request

Background:

City Project No. FM-14-71 (6228) was initiated in July of 2013 through an agreement with Houston Engineering. At that time, the project included the design and construction of levee and floodwall segments totaling about 2,500 lineal feet. The concept plans included in the RFP showed new levee segments on the north and south sides of Drain #27 with short segments of floodwall where adequate space was not available. Levee heights were proposed in the range of 6-8 feet depending on the location. Portions of the drain on the north and south side have had levee improvements installed prior to 2013. The connection of the existing levee segments was to be completed through the proposed improvements for this project.

The project was intended to be completed in two phases with a north and south portion respectively. The first phase of construction was scheduled to begin in 2016 and was to include the south side improvements along the drain and a new storm sewer lift station adjacent to 42nd Street South. During the spring of 2016, the Revised Flood Comprehensive plan was adopted by City Commission, which modified the improvements along Drain #27, west of I-29. The levee and floodwall improvements were dropped from the plan and only the improvements to the lift stations were carried forward as part of the new revised plan.

With the removal of the levee and floodwall proposed improvements, the Engineering Department proposed to construct both new lift stations under the same contract to simplify project coordination in the area and hopefully receive economies of scale to help reduce the overall construction costs. The FM-14-71 project was put out to bid in 2019 but received no contractor bids. Upon contractor discussions, it was determined with existing workloads and the project completion dates proposed, Contractors had insufficient resources to complete the work as outlined in the contract. The project was then placed on hold until the fall of 2021, when the plans were re-evaluated. With the progression of the Diversion and value

PWPEC
Project No. FM-14-72
Amendment #2

engineering efforts, the plans have been modified to reduce the overall lift station heights and structure modifications were selected.

The original contract signed by Houston Engineering for this project was for the development of project concept plans and the design of Phase 1, which included the south side lift station, but not the construction administration and inspection services, in the amount of \$271,132.00. With the approved Contract Amendment 1, Houston Engineering was directed to design the north side lift station and complete the construction services for both lift station project locations.

The total cost approved under Contract Amendment #1 was \$396,182 for the additional work that was to be completed by Houston Engineering for design, construction administration, and inspection services for Lift Stations #55 and #56 (north and south sides of Drain #27 at 42nd Street South). The present amount remaining from the original contract and Contract Amendment #1 is approximately \$170,200.00. The amount of Contract Amendment #2 is the estimated engineering costs through project completion minus the remaining balance from Contract Amendment #1. The proposed amount of Contract Amendment #2 is \$265,600.00. Attached documents have the estimated hours for the engineering services for completion of design, rebidding and construction administration of this project in the proposal from Houston Engineering.

Recommend Motion:

Approve Contract Amendment #2 submitted by Houston Engineering in the amount of \$265,600.00 which would bring the new contract total amount to \$932,914.00.

Fargo Corporate Office 701.237.5065 701.237.5101

1401 21st Avenue North Fargo ND 58102



HoustonEngineering Inc.

ENGINEERING SERVICES AGREEMENT

AMENDMENT NO. 2

Project: City of Fargo Project No. 6228 (FM-14-72)
Formerly City of Fargo Project No. 6228 (FM-14-71)
Drain 27 Flood Risk Management Project
(Interstate 29 to 42nd Street South)
HE Project No. 6059-0062

Client: City of Fargo Engineering
225 4th St N
Fargo, ND 58102
Phone (701) 241-1545

Location of Project: City of Fargo, Cass County, North Dakota

Description of Work: This contract amendment addresses additional services provided as a result of design changes to be completed prior to rebidding the project, additional hourly construction services anticipated as a result of changes to the construction schedule, and escalation in hourly rates since 2019 for the Lift Station #55 & #56 phase of the Drain #27 Flood Risk Management Project.

Additional design services generally include changes to the geometric layout of Lift Station #55 and Lift Station #56, new structural analysis of Lift Station #56, removal of Gatewell #56, lowering of adjacent berms, revisions to utility replacements, and additional civil design components required to accommodate the major design changes and produce plans and other contract documents suitable for project rebid. Assistance with property acquisitions and permit submittals will also be provided.

Additional estimated construction service costs are based on approximated full time and part time weeks over the duration of the construction timeline as defined in the milestones in the project Special Instructions to Bidders, however future work will continue to be completed on an hourly basis as set forth in the original contract.

The additional services associated with the Lift Station #55 & #56 Phase detailed in this amendment are based on the following general breakdown of tasks and subtasks.

Bismarck 701.323.0200 701.323.0300

Maple Grove 763.493.4522 763.493.5572

Minot 701.852.7931 701.858.5655

Thief River Falls 218.681.2951 218.681.2987

Page 2

Listed task and subtask costs represent estimated cost to complete from the date of the contract amendment request. The project has a current existing contract value of approximately \$170,200. An amendment to the contract is requested for consideration equal to the estimated cost to complete the project less the existing contract value:

Task 1 – Services During Project Development – \$52,100 Total

Subtask 1.1 – Project Administration

The project has been suspended since 2019. Included in this subtask are re-kickoff and coordination meetings with the City, permitting and land acquisition assistance, and a QA/QC plan that will include a review by City staff, revisions by HEI, and documentation of items addressed.

The additional cost to complete **Subtask 1.1** is \$6,600.

Subtask 1.2 – Small Utility Coordination

A portion of small utility relocations were completed prior to project suspension in 2019. Small utility owners will be reengaged to determine the current state of their utilities in the area. For utilities still in conflict with the project, relocation plans and timelines will be coordinated. Meetings with utility owners will be completed as required.

The additional cost to complete **Subtask 1.2** is \$3,000.

Subtask 1.3 – Civil Redesign

The proposed berms adjacent to the proposed lift stations will be lowered to 909'. Proposed grading and levee design (including core/inspection depth) will be reevaluated. Additional modifications to utilities, driveways, plantings, and other incidental design items will be required to accommodate the levee and lift station modifications. The SIB's will be updated to match specifications from more recent City lift station projects. The plan set and SIB's will be modified to current City standards. Earthwork and other civil related quantities will be revised.

The additional cost to complete **Subtask 1.3** is \$20,800.

Subtask 1.4 – Electrical Design

After initial bidding in 2019, Cass County Electric proposed modifications to electric power utility relocations and final transformer locations. JK Engineers will review these proposed modifications and confirm they are compatible with the electrical design.

The additional cost to complete **Subtask 1.4** is \$2,500.

Subtask 1.5 – Structure Redesign

The lid of LS #55 will be lowered to 911'. This will not require a redesign of LS #55. The lid of LS #56 will be lowered, and the south wall will be extended several feet to accommodate the removal of Gatewell #56. A gate and trash screen will be added in the wall dividing the flow through cell and the pump bay cell. A new structural analysis will be completed for LS #56. Additional LS modifications, including modifications to catwalks, discharge piping, fences, architectural finishes (lid overhangs) and other appurtenances will be completed as necessary.

The additional cost to complete **Subtask 1.5** is \$19,200.

Task 2 – Services During Bidding - \$7,000 Total

Subtask 2.1 – Services During Bidding

HEI will develop an Opinion of Probable Construction Costs and develop list of pay items for City's pay tracking software. HEI will provide responses to contractor requests for information.

The additional cost to complete **Subtask 2.1** is \$7,000.

Task 3 – Services During Construction - \$376,700 Total

Subtask 3.1 – Construction Administration

The revisions to construction services result primarily from the changes to the project magnitude and schedule from the concept included in the Request for Proposal (RFP) and Amendment #1. Previously, the construction duration was estimated at approximately 16 weeks and was to be completed in 2019. These modifications to the project features have increased the level of effort in survey and construction observation/coordination. As specified in the proposed SIB's, prospective contractors will be provided an extended construction timeframe encompassing the majority of 2 full construction seasons. However, it is unknown until a contract is awarded, what the actual construction timeline will be. In order to develop an estimated cost for construction administration, HEI assumed our services would span 52 weeks with various levels of RPR effort (hours per week) required. An assumed breakdown is provided in bulleted format below. This would include RPR services along with additional in-office engineering assistance, submittal review, private utility coordination, change management, construction progress reports and progress payments. Also included in this subtask is assisting the City with expected SRF loan requirements, including AIS certification and contractor payroll reviews.

- 28 full time weeks (40 hours/week) and 24 part time weeks (10-20 hours/week)
 - Full time observation (40 hours/week) will be required for June-October, 2022 (20 weeks).
 - Part time observation (20 hours/week) will be required for November, 2022 (4 weeks).
 - Construction activities will cease from December, 2022 through March, 2023.
 - Part time observation (20 hours/week) will be required for April and May, 2023 (8 weeks).
 - Full time observation (40 hours/week) will be required for June-July, 2023 (8 weeks).
 - Part time observation (10 hours/week) will be required for August-October, 2023 (12 weeks).
 - Similar to RPR time requirements, time requirements for in-office project administration are expected to vary by month and are assumed to follow the schedule noted above. For months where full-time observation is assumed, it is assumed that 10 hours per week of in-office project administration will be required. This assumed number of hours is prorated for part-time weeks.

The additional cost to complete **Subtask 3.1** is \$312,100.

Subtask 3.2 – Construction Materials Testing

Material testing services will be provided by Braun in accordance with their scope attached to this document.

The additional cost to complete **Subtask 3.2** is \$40,000.

Subtask 3.3 – Project Closeout

This subtask includes final inspection, closeout certification, warranty inspections, design decision documentation, record drawings, and other miscellaneous project closeout items.

The additional cost to complete **Subtask 3.3** is \$24,600.

Basis of Proposal

This amendment only covers the services as described above. Specifically, the amendment includes additional tasks due to changes completed during project development, and a revised estimate for construction services. These services will continue to be provided on an hourly basis as per the original contract. This additional fee is estimated to cover the costs of revised Lift Station #55 and Lift



Page 5

Station #56 project extents as shown in the construction plans, with additional amendments required for additional work outside of these extents.

Fee:

The total estimated fee to complete the above-described tasks is \$435,800. The project has a current existing contract value of approximately \$170,200. An amendment to the contract is requested for consideration equal to the estimated cost to complete the project less the existing contract value, or **\$265,600**. Additional work required beyond the scope listed above will be billed at our current hourly rates. This includes any modifications of the project extents, including re-inclusion of previously proposed flood risk management features. Houston Engineering, Inc. (with assistance from Braun Intertec, Inc. and JK Engineers) will perform the services as outlined above and detailed in the Attachments to this letter. Tasks will be performed in accordance with our current hourly rates in the year services are provided.

Conditions: Services will be invoiced monthly and are due and payable upon receipt.

Limitation of Liability: Houston Engineering, Inc. agrees to indemnify and save the client harmless from any loss, cost, or expense including attorney fees, claimed by third parties for property damage or bodily injury, including death, caused by the negligence of Houston Engineering, Inc. or its employees in connection with Houston Engineering, Inc.'s services. The client agrees to indemnify and save Houston Engineering, Inc. harmless from any loss, cost, or expense, including attorney fees, claimed by third parties for property damage or bodily injury including death, caused by the negligence of the client or its employees in connection with the operations of the client. If the negligence of both Houston Engineering, Inc. and the client (or a person identified above for whom each is liable) is the cause of such damage or injury, the loss, cost, or expense shall be shared between Houston Engineering, Inc. and the client in proportion to their relative degrees of negligence and the right of indemnity shall apply for such proportion. Neither party hereto shall be liable to the other for incidental, special or indirect damages nor shall Houston Engineering, Inc. be liable for any cost or expense that provides betterment, upgrade or enhancement of the project.

Houston Engineering, Inc. hereby proposes, and the client hereby authorizes, the above described services to be performed by Houston Engineering, Inc. under the terms and conditions set forth.

Authorization:

Client: City of Fargo

Signature: _____

Title: _____

Date: _____

Proposal: Houston Engineering, Inc.Signature: _____

Title: Vice President

Date: 3/12/2022

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-16-A1 Type: Milestone No. 5 Time Extension (Change Order #10)

Location: 45th St & 64th Ave N Date of Hearing: 2/28/2022Routing

City Commission

PWPEC File

Project File

Date

3/7/2022

X

Roger Kluck

8

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, regarding a time extension to Milestone No. 5 (Change Order #10) requested by Key Contracting. This request moves the Milestone No. 5 completion date from February 15, 2022 to March 18, 2022.

Staff is recommending approval of the time extension to Milestone No. 5 (Change Order #10) as described above.

On a motion by Kent Costin, seconded by Steve Sprague, the Committee voted to recommend approval of the time extension to Milestone No. 5 (Change Order #10) to Key Contracting.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve the Milestone No. 5 time extension (Change Order #10) with Key Contracting adjusting the completion date from February 15, 2022 to March 18, 2022.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

Yes No

N/A

N/A

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☐☐☐

Nicole Crutchfield, Director of Planning

☒☒☐

Mark Williams

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☒☒☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☒☒☐

ATTEST:

C: Kristi Olson

B.E.D.

Brenda E. Derrig, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Roger E. Kluck, PE, CFM Civil Engineer II, Storm Sewer & Floodplain
Date: February 14, 2022
Re: Project No. FM-16-A1 – Change Order No. 10
North Side Flood Risk Management Levee

Background:

This project was advertised in August 2020 and the project was awarded to Key Contracting in September 2020. The Contractor is requesting an extension for the milestone #5 date of February 15, 2022. The lift station control panel did not arrive until January 26, 2022 and the Contractor has been working diligently as weather permits to complete permanent wiring of the control panel and energizing the pumps and control gates. The Lift Station/Control Structure is complete except for the final control panel wiring and the control gates are closed to provide flood protection as designed. On Thursday, February 24, 2022, we found during startup that the radio transmitter would not work as shipped, so a new one has been ordered. The lift station will run if needed, but does not connect to our SCADA control network.

The milestone completion date for lift station/control structure would change from February 15, 2022 to March 18, 2022. This change order will not affect the overall contract completion dates or other milestone completion requirements. The Consultant recommends approval of the no cost schedule change and so does Engineering.

Funding for this project will come from the Flood Sales Tax Fund 460, but this will be a no cost change order.

Recommended Motion:

Approve Change Order No. 10 for a no cost schedule change to Milestone No. 5 changing the completion date from February 15, 2022 to March 18, 2022.

REK/klb
Attachment

Key Contracting, Inc.

245 7th Avenue NE

West Fargo, North Dakota 58078

Phone: (701) 238-8192

Fax: (701) 356-0166

Internet: keycontracting.com



CHANGE ORDER REQUEST # 12

Submitted To:	Moore Engineering
Attention	Brady Woodard
Date:	2/26/2022
Project :	City of Fargo FM-16-A1
Total Price	No Price Change Order

Key Contracting, Inc., hereby submits a request for a time extension for Milestone 5.

Description				
Key Contracting requests a time extension from February 15 to March 18 for Milestone #5. Key Contracting had a "soft start-up" on Thursday, February 24. During the start up the radio transmitter was found to be defective. We have ordered a new one and expect it from the factory in 1- 2 weeks. The pumps are operational in case of Flood, but telemetry will not connect until we install new radio.				

Steve Carr

Key Contracting, Inc.

Contact: Steve Carr

Cell (701) 371-1284



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

REVISED

Project No	FM-16-A1	Change Order No	10
Project Name	North Side Flood Risk Management Levee		
Date Entered	2/14/2022	For	Key Contracting Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE: Milestone 5 Schedule change revised date to March 18

The control panel for the lift station did not arrive until January 26, 2022. The project SIB's identified Milestone #5, which is the completion of the lift station as February 15, 2022. The contractor has been working diligently since receipt of the control panel as weather permits to complete energizing the lift station. The contractor is requesting a time extension on Milestone 5 to March 18, 2022. The lift station and control gates are completed and the gates are closed to provide flood control as designed. The control panel and pumps are operational. The only missing piece is a replacement radio transmitter because the one shipped was defective and the SCADA will not work.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prav Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Summary										
Source Of Funding										
Net Amount Change Order # 10 (\$)										
Previous Change Orders (\$)										227,170.90
Original Contract Amount (\$)										9,211,536.30
Total Contract Amount (\$)										9,438,707.20

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
08/15/2022	07/01/2022	0.00	0.00	06/15/2022	07/01/2022

Description

APPROVED

APPROVED DATE

For Contractor

Department Head

Key Contracting, Inc.

T. Cole 3/2/22

Report Generated : 02/25/2022 04:04:53 PM

Page 1 of 2

Project No : FM-16-A1



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Title *V. President*

Mayor

Attest

February 23, 2022

Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

9

**Re: Memorandum of Offer to Landowner
Permanent & Temporary Easements - Project #FM-19-C**

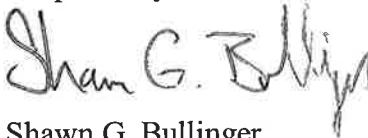
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a permanent & temporary easements in association with Project #FM-19-C. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a permanent & temporary easement from **Mary Bjerke** in association with Project #FM-19-C and that the Mayor is instructed to execute the Memorandum of Offer to Landowner on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris
Nathan Boerboom

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project FM-19-C	County Cass	Parcel(s) 01-4060-00680-000
Landowner Mary Bjerke		
Mailing Address 186 North Woodcrest Drive N		


The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See enclosed easement(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 35,455.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	
Easement and Access Control	\$	35,455.00
Improvements on Right of Way*	\$	
Damages to Remainder	\$	
Total Offer	\$	35,455.00

*Description of Damages to Remainder are as follows:


 Owner Signature
 Signature hereby constitutes acceptance of offer as presented above.


 Shawn G. Bullinger
 Land Acquisition Specialist, City of Fargo

Fargo City Commision has considered the offer and approves the same:

CITY OF
Fargo

Timothy J. Mahoney

MAYOR

SIGNATURE

DATE

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **MARY BJERKE**, whether one or more, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to him in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of levee and storm sewer construction and activities appurtenant thereto, said land being more fully described, to-wit:

That part of Lot 21, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the southeast corner of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 123.86 feet to the true point of beginning; thence North 14°51'39" West for a distance of 86.53 feet to a point of intersection with the northerly line of said Lot 21; thence South 74°10'01" West, along the northerly line of said Lot 21, for a distance of 42.16 feet; thence South 07°50'28" East for a distance of 64.05 feet; thence South 43°09'00" East for a distance of 59.09 feet to a point of intersection with the easterly line of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 37.01 feet to the true point of beginning.

Said tract contains 4,488 square feet, more or less.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

Grantor, his successors and assigns, hereby covenants to and with Grantee that Grantee's

officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, his successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.

This easement shall terminate on June 30, 2023.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 16 day of Nov., 2021.

GRANTORS:

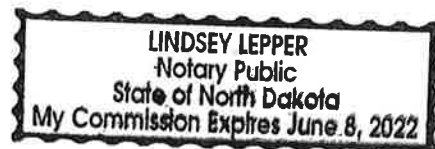
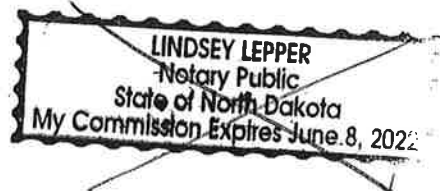
Mary Bjerke
Mary Bjerke

STATE OF North Dakota)
COUNTY OF Cass) ss.

On this 16th day of November, 2021, before me, a notary public in and for said county and state, personally appeared Mary Bjerke to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.

(SEAL)

Lindsey Lepper
Notary Public
Cass County, North Dakota



IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this ____ day of _____, 2021.

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

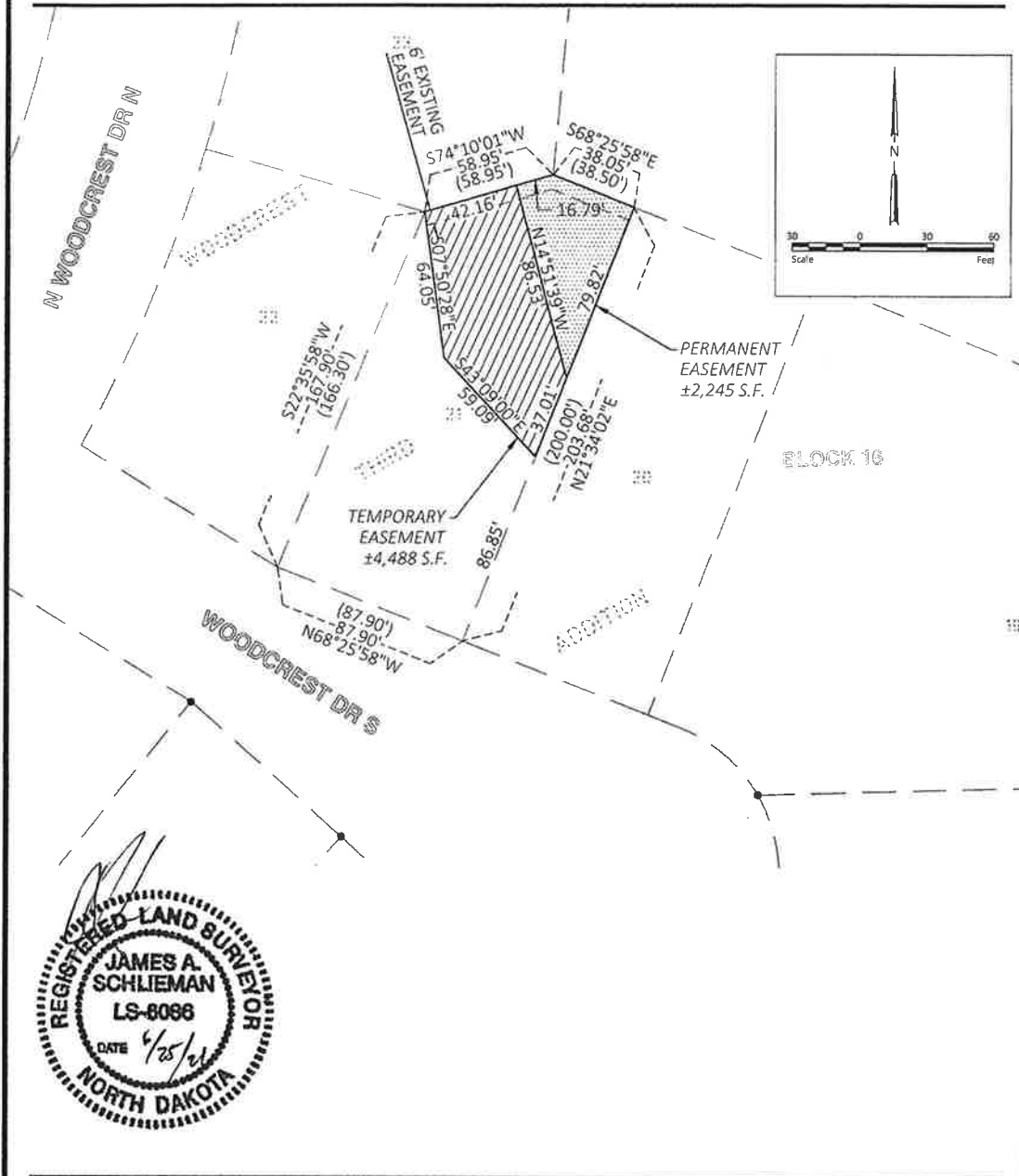
(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
James A. Schlieman
Registered Land Surveyor
LS-6086
Houston Engineering Inc.
1401 21st Ave. N.
Fargo, ND 58102
(701) 237-5065

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

PART OF LOT 21, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA



NOTE: ALL BEARINGS GIVEN ARE
BASED ON THE CITY OF
FARGO GIS COORDINATE
SYSTEM.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
1 OF 2

PART OF LOT 21, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

Description - Permanent Easement:

That part of Lot 21, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the southeast corner of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 123.86 feet to the true point of beginning; thence North 14°51'39" West for a distance of 86.53 feet to a point of intersection with the northerly line of said Lot 21; thence North 74°10'01" East, along the northerly line of said Lot 21, for a distance of 16.79 feet to the most northerly corner of said Lot 21; thence South 68°25'58" East, along the northeasterly line of said Lot 21, for a distance of 38.05 feet to the northeast corner of said Lot 21; thence South 21°34'02" West, along the easterly line of said Lot 21, for a distance of 79.82 feet to the true point of beginning.

Said tract contains 2,245 square feet, more or less.

Description - Temporary Easement:

That part of Lot 21, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the southeast corner of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 123.86 feet to the true point of beginning; thence North 14°51'39" West for a distance of 86.53 feet to a point of intersection with the northerly line of said Lot 21; thence South 74°10'01" West, along the northerly line of said Lot 21, for a distance of 42.16 feet; thence South 07°50'28" East for a distance of 64.05 feet; thence South 43°09'00" East for a distance of 59.09 feet to a point of intersection with the easterly line of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 37.01 feet to the true point of beginning.

Said tract contains 4,488 square feet, more or less.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
2 OF 2

PERMANENT EASEMENT
(Storm Sewer)

KNOW ALL MEN BY THESE PRESENTS that **MARY BJERKE**, hereinafter referred to as "Grantors", whether one or more, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a storm sewer, together with the customary appurtenances, said tract being more particularly described as follows:

That part of Lot 21, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the southeast corner of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 123.86 feet to the true point of beginning; thence North 14°51'39" West for a distance of 86.53 feet to a point of intersection with the northerly line of said Lot 21; thence North 74°10'01" East, along the northerly line of said Lot 21, for a distance of 16.79 feet to the most northerly corner of said Lot 21; thence South 68°25'58" East, along the northeasterly line of said Lot 21, for a distance of 38.05 feet to the northeast corner of said Lot 21; thence South 21°34'02" West, along the easterly line of said Lot 21, for a distance of 79.82 feet to the true point of beginning.

Said tract contains 2,245 square feet, more or less.

Said parcel is pictorially represented on Exhibit "A" attached hereto and incorporated herein by reference.

Grantor, its successors and assigns, hereby covenant to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said storm sewer and customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said storm sewer including customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said storm sewer and customary appurtenances was begun.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set her hand and caused this instrument to be executed
this 16 day of November, 2021.

GRANTOR:

Mary Bjerke

STATE OF NORTH DAKOTA

)

) SS.

COUNTY OF CASS

)

On this 16th day of November, 2021, before me, a notary public in and for said county and state, personally appeared Mary Bjerke, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

Notary Public
Cass County, North Dakota

(SEAL)

LINDSEY LEPPER
Notary Public
State of North Dakota
My Commission Expires June 8, 2022

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this ____ day of _____, 2021.

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, ND
My Commission expires:

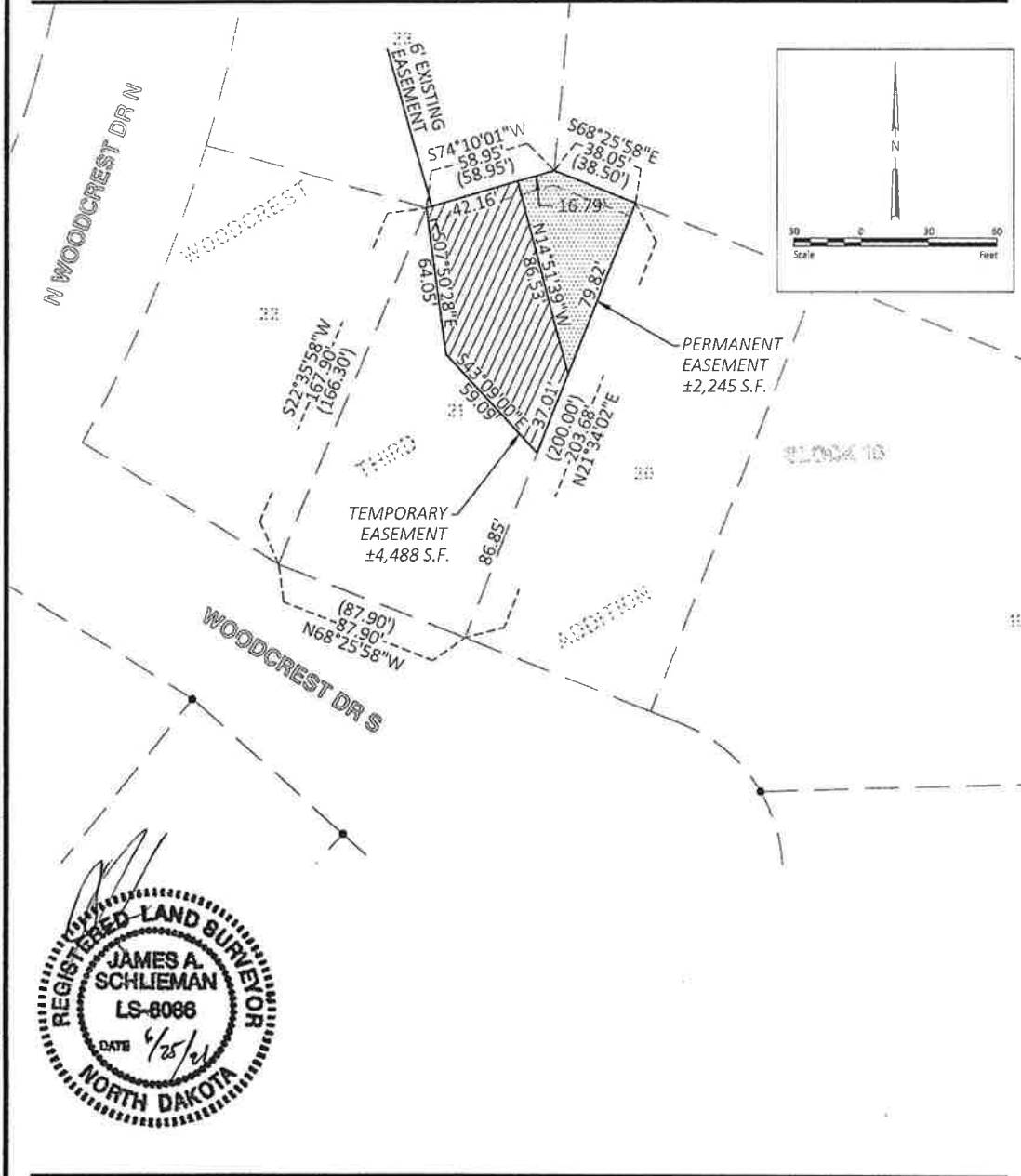
The legal description was prepared by:

James A. Schlieman
Registered Land Surveyor
LS-6086
Houston Engineering Inc.
1401 21st Ave. N.
Fargo, ND 58102
(701) 237-5065

This document was prepared by:

Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

PART OF LOT 21, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA



IRON MONUMENT FOUND
MEASURED BEARING
MEASURED DISTANCE
PLAT BEARING
PLAT DISTANCE
PERMANENT EASEMENT
TEMPORARY EASEMENT

S59°27'46\"E
105.00'
(N57°00'00\"W)
(105.00')

NOTE: ALL BEARINGS GIVEN ARE
BASED ON THE CITY OF
FARGO GIS COORDINATE
SYSTEM.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
1 OF 2

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PART OF LOT 21, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

Description - Permanent Easement:

That part of Lot 21, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the southeast corner of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 123.86 feet to the true point of beginning; thence North 14°51'39" West for a distance of 86.53 feet to a point of intersection with the northerly line of said Lot 21; thence North 74°10'01" East, along the northerly line of said Lot 21, for a distance of 16.79 feet to the most northerly corner of said Lot 21; thence South 68°25'58" East, along the northeasterly line of said Lot 21, for a distance of 38.05 feet to the northeast corner of said Lot 21; thence South 21°34'02" West, along the easterly line of said Lot 21, for a distance of 79.82 feet to the true point of beginning.

Said tract contains 2,245 square feet, more or less.

Description - Temporary Easement:

That part of Lot 21, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the southeast corner of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 123.86 feet to the true point of beginning; thence North 14°51'39" West for a distance of 86.53 feet to a point of intersection with the northerly line of said Lot 21; thence South 74°10'01" West, along the northerly line of said Lot 21, for a distance of 42.16 feet; thence South 07°50'28" East for a distance of 64.05 feet; thence South 43°09'00" East for a distance of 59.09 feet to a point of intersection with the easterly line of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 37.01 feet to the true point of beginning.

Said tract contains 4,488 square feet, more or less.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
2 OF 2

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PERMANENT EASEMENT
(Levee and Retaining Wall for Flood Control)

KNOW ALL MEN BY THESE PRESENTS that **MARY BJERKE**, hereinafter referred to as "Grantor", whether one or more, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid, the receipt whereof is hereby acknowledged, **HEREBY GRANT UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, under, upon and in the land hereafter described for the purpose of constructing and maintaining an earthen dike and retaining wall, together with any and all other appurtenant structures or devices, said tracts of land being more particularly described as follows:

That part of Lot 21, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the southeast corner of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 123.86 feet to the true point of beginning; thence North 14°51'39" West for a distance of 86.53 feet to a point of intersection with the northerly line of said Lot 21; thence North 74°10'01" East, along the northerly line of said Lot 21, for a distance of 16.79 feet to the most northerly corner of said Lot 21; thence South 68°25'58" East, along the northeasterly line of said Lot 21, for a distance of 38.05 feet to the northeast corner of said Lot 21; thence South 21°34'02" West, along the easterly line of said Lot 21, for a distance of 79.82 feet to the true point of beginning.

Said tract contains 2,245 square feet, more or less.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may, at any and all times when necessary or convenient to do so, go over and upon said above-described tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further understands and agrees that they will not disturb, injure, molest or in any manner interfere with said earthen dike or retaining wall as constructed and the customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises. Grantor, its successors and assigns, further expressly warrants and states that no buildings, trees, shrubs, sprinkler systems or other obstacles of any kind shall be placed or located upon the tract in any manner which may interfere with said earthen dike or retaining wall.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 16 day of Nov, 2021.

GRANTORS:


Mary Bjerke

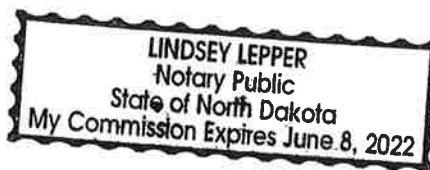
STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this 16th day of November, 2021, before me, a notary public in and for said county and state, personally appeared Mary Bjerke described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)



Notary Public
Cass County, North Dakota



IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this ____ day of _____, 2021.

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

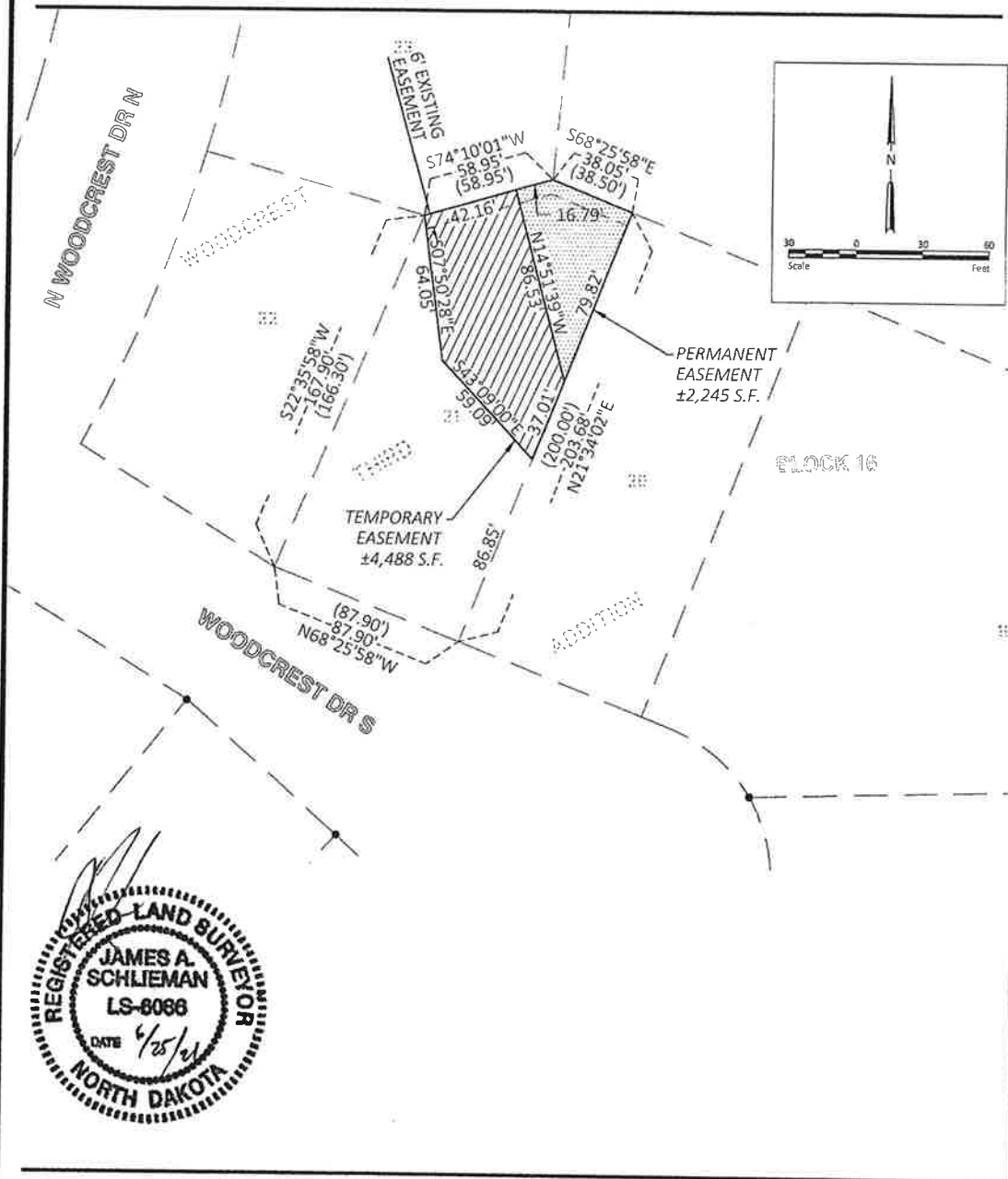
(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
James A. Schlieman
Registered Land Surveyor
LS-6086
Houston Engineering Inc.
1401 21st Ave. N.
Fargo, ND 58102
(701) 237-5065

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com

PART OF LOT 21, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
1 OF 2

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PART OF LOT 21, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

Description - Permanent Easement:

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Said tract contains 2,245 square feet, more or less.

Description - Temporary Easement:

That part of Lot 21, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the southeast corner of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 123.86 feet to the true point of beginning; thence North 14°51'39" West for a distance of 86.53 feet to a point of intersection with the northerly line of said Lot 21; thence South 74°10'01" West, along the northerly line of said Lot 21, for a distance of 42.16 feet; thence South 07°50'28" East for a distance of 64.05 feet; thence South 43°09'00" East for a distance of 59.09 feet to a point of intersection with the easterly line of said Lot 21; thence North 21°34'02" East, along the easterly line of said Lot 21, for a distance of 37.01 feet to the true point of beginning.

Said tract contains 4,488 square feet, more or less.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
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March 2, 2022

10

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Project No. PR-22-A1

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, March 2, 2022, for Street Rehabilitation & Incidentals, Project No. PR-22-A1, located city wide.

The bids were as follows:

Roadway Services, Inc.	\$ 77,600.00
Asphalt Surface Technologies Corporation	\$ 92,400.00
Northwest Asphalt & Maintenance	\$ 104,080.00

Engineer's Estimate	\$ 85,000.00
---------------------	--------------

The special assessment escrow is not required.

This office recommends award of the contract to Roadway Services, Inc. in the amount of \$77,600.00 as the lowest and best bid. No protests have been received.

Sincerely,



Thomas Knakmuhs
Assistant City Engineer

**ENGINEER'S STATEMENT OF ESTIMATED COST****PROJECT # PR-22-A1****Street Rehabilitation & Incidentals**

City Wide

WHEREAS, bids have been opened and filed for the above described Improvement District for City of Fargo, North Dakota; and
WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

Street Rehabilitation & Incidentals Project # PR-22-A1 of the City of Fargo, North Dakota.

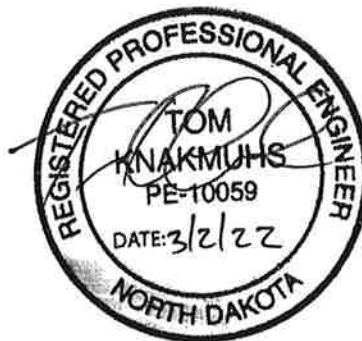
Line Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
Paving				
1 Mobilization	LS	1.00	1,000.00	1,000.00
2 Repair Crack - Fill	LB	40000.00	1.52	60,800.00
3 Repair Crack - Rout and Fill	LF	8000.00	0.75	6,000.00
4 Repair Crack - Level	LF	3000.00	3.10	9,300.00
5 Traffic Control - Minor	LS	1.00	500.00	500.00
Paving Total				77,600.00
Total Construction in \$				77,600.00
Engineering				10.00 % 7,760.00
Legal & Misc				3.00 % 2,328.00
Contingencies				5.00 % 3,880.00
Administration				4.00 % 3,104.00
Interest				4.00 % 3,104.00
Total Estimated Costs				97,776.00
Sales Tax Funds - Infrastructure - 420				97,776.00
Unfunded Costs				-

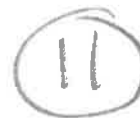
IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 03/02/2022

Tom Knakmuhs

Assistant City Engineer



COVER SHEET
CITY OF FARGO PROJECTS

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Project as it will appear in the Contract:

Sidewalk & Shared Use Path Rehab/Reconstruction

Project No. SR-22-B

Call For Bids March 7, 2022

Advertise Dates March 16, 23 & 30, 2022

Bid Opening Date April 13, 2022

Substantial Completion Date September 23, 2022

Final Completion Date October 14, 2022

N/A PWPEC Report (Attach Copy) (**Part of the CIP**)

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

N/A Notice to Property Owners (Dan Eberhardt)

Project Engineer Brandon Beaudry

Phone No. (701) 476-4107

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

N/A Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

N/A Assessment Map (Attach Copy for Auditor's Office Only)



ENGINEER'S REPORT

**SIDEWALK & SHARED USE PATH
REHAB/RECONSTRUCTION**

PROJECT NO. SR-22-B

VARIOUS AREAS CITY WIDE

Nature & Scope

This project is for new construction and reconstruction of sidewalk and curb ramps throughout the City of Fargo.

Purpose

To install and reconstruct sidewalks and curb ramps ordered by the City Commission.

Feasibility

The estimated cost of construction is \$588,005.00. The cost breakdown is as follows:

Special Assessments		
Construction Cost		\$352,795.00
Fees		
Engineering	10%	\$35,279.50
Admin	4%	\$14,111.80
Legal	3%	\$10,583.85
Interest	4%	\$14,111.80
Contingency	5%	\$17,639.75
Total Estimated Cost		\$444,521.70
Funding		
Special Assessments	100.00%	\$444,521.70

Infrastructure Sales Tax

Construction Cost		\$235,210.00
--------------------------	--	--------------

Fees

Engineering	10%	\$23,521.00
Admin	4%	\$9,408.40
Legal	3%	\$7,056.30
Interest	4%	\$9,408.40
Contingency	5%	\$11,760.50

Total Estimated Cost		\$296,364.60
-----------------------------	--	---------------------

Funding

Sales Tax Funds - Infrastructure - 420	100.00%	\$296,364.60
--	---------	--------------

Project Funding Summary

Sales Tax Funds - Infrastructure - 420	40.00%	\$296,364.60
Special Assessments	60.00%	\$444,521.70

Total Estimated Project Cost		\$740,886.30
-------------------------------------	--	---------------------

This project does not have any alternate or optional containers.

We believe this project to be cost effective.




Thomas Knakmuhs, PE
Assistant City Engineer

COVER SHEET
CITY OF FARGO PROJECTS

(116)

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Project as it will appear in the Contract:

Utility Rehab/Reconstruction

Project No. UR-21-B

Call for Bids March 7, 2022

Advertise Dates March 16, 23 & 30, 2022

Bid Opening Date April 13, 2022

Substantial Completion Date September 16, 2022

Final Completion Date September 30, 2022

N/A PWPEC Report (Attach Copy) **Part of 2022 CIP**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

N/A Notice to Property Owners (Dan Eberhardt)

Project Engineer Roger E. Kluck, PE, CFM

Phone No. (701) 241-1537

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

N/A Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

N/A Assessment Map (Attach Copy for Auditor's Office Only)



ENGINEER'S REPORT
UTILITY REHAB/RECONSTRUCTION
PROJECT NO. UR-21-B
11 SITES ACROSS THE CITY.

Nature & Scope

Repair outfalls.

Purpose

The purpose of this project is to repair existing Storm Sewer infrastructure outfalls on the river and to repair levee flood control infrastructure.

Feasibility

The estimated cost of construction is \$300,598.00. The cost breakdown is as follows:

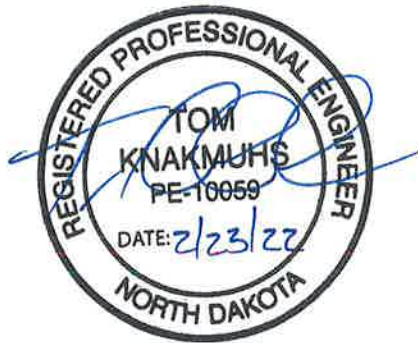
Storm Water Utility Funds		
Construction Cost		\$300,598.00
Fees		
Engineering	10%	\$30,059.80
Admin	4%	\$12,023.92
Legal	3%	\$9,017.94
Interest	4%	\$12,023.92
Contingency	5%	\$15,029.90
Total Estimated Cost		\$378,753.48
Funding		
Utility Funds - Stormwater - 524	100.00%	\$378,753.48

Project Funding Summary

Utility Funds - Stormwater - 524	100.00%	\$378,753.48
Total Estimated Project Cost		\$378,753.48

This project does not have any alternate or optional containers.

We believe this project to be cost effective.



A large, stylized handwritten signature in blue ink, which appears to read "TKN", written over a horizontal line.

Thomas Knakmuhs, PE
Assistant City Engineer

COVER SHEET
CITY OF FARGO PROJECTS

11c

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Project as it will appear in the Contract:

Fargo Project-North Pond

Project No. TP-21-B

Call for Bids March 7, 2022

Advertise Dates March 16, 23 & 30, 2022

Bid Opening Date April 13, 2022

Substantial Completion Date September 16, 2022

Final Completion Date September 16, 2022

N/A PWPEC Report (Attach Copy) **Part of 2022 CIP**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

N/A Notice to Property Owners (Dan Eberhardt)

Project Engineer Roger E. Kluck, PE, CFM

Phone No. (701) 241-1537

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

N/A Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

N/A Assessment Map (Attach Copy for Auditor's Office Only)



ENGINEER'S REPORT
FARGO PROJECT - NORTH POND
PROJECT NO. TP-21-B

4302 17 AVE S RRHS STORM WATER DETENTION POND

Nature & Scope

To provide aesthetic improvements to enhance a storm water detention pond for Red River Human Services that has been constructed on Park land.

Purpose

To provide landscape architectural enhancements to a detention pond for Red River Human Services for demonstration of plantings and educational features in conjunction with Park enhancements. The pond adjoins the Fargo Project.

Feasibility

The estimated cost of construction is \$80,446.25. The cost breakdown is as follows:

Fargo Special Improvements		
Construction Cost		\$58,550.00
Fees		
Contingency	5%	\$2,927.50
Total Estimated Cost		\$61,477.50
Funding		
City Share Special Improvements - 202	100.00%	\$61,477.50

RRHS Pre-Pay

Construction Cost		\$21,896.25
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Fees

Contingency	5%	\$1,094.81
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Total Estimated Cost		\$22,991.06
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Funding

Other Source	100.00%	\$22,991.06
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Project Funding Summary

City Share Special Improvements - 202	72.78%	\$61,477.50
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Other Source	27.22%	\$22,991.06
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Total Estimated Project Cost		\$84,468.56
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This project does not have any alternate or optional containers.

We believe this project to be cost effective.




 Thomas Knakmuhs, PE
 Assistant City Engineer

Fargo Fire Department

12

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: MARCH 3, 2022

**SUBJECT: FIRE DEPARTMENT GRANT ACCEPTANCE FROM NORTH DAKOTA DES
CHANGE OF SCOPE FOR REMAINING FUNDS**

The North Dakota Department of Emergency Services (NDDDES) – Division of Homeland Security has approved a grant application for the FY 19 State Homeland Security Grant Program in the amount of \$188,550.00. Items that will be purchased are personal protective equipment, power equipment, training, and other authorized equipment.

NDDDES has extended the grant performance period to allow the change of scope and reauthorization of funds that were not able to be expended due to COVID-19. On February 14, 2022, the Fargo Fire Department was informed that a remaining balance of \$31,133.61 was available for change of scope. A needs assessment was completed and a change of scope was submitted. On February 28, 2022, the FFD received notice that the change of scope was approved for the expenditure of the remaining balance.

RECOMMENDED MOTION: Receive and file, as this is a point of information and no budgetary action is required, as it was already made in 2019.

SD/LS
Enclosure

Cc: Kent Costin

Project S3 - Regional-Fargo Fire Department-HazMat/Search and Rescue Response

Closeout in Progress

Project Details

Est. Completion Date: June 30, 2021

Number: S# 3

Title: Regional-Fargo Fire Department-HazMat/Search and Rescue Response

Type: GHSGP - General HSGP

Application: View Application

Eligible \$188,550.00 [Expand](#)

Obligated:

Federal \$188,550.00 (100.00%) [Expand](#)

Obligated:

State Obligated: \$0.00 (0.00%)

Local Share: \$0.00 (0.00%)

Advances \$0.00

Requested:

Work Complete 100.00%
%: Quarterly Report FFY2021 Q4: Jul 2021 - Sep 2021 is 100.00% complete.
 Project Version 1 is 0.00% complete.

Work Completed June 30, 2021

Date:

Project Status: Closeout in Progress

Work Deadline: June 30, 2021

In Process Quarterly Reports (2) [Expand](#)

Requests: Project Closeout (1) [Expand](#)

Scope Change (1) [Expand](#)

Grant

FY 2019 State Homeland Security Program-Regional Teams

State Homeland Security Program

Declared: September 1, 2019

Closed: July 31, 2022

Work Deadline: July 31, 2022

CFDA Number: 97.067

Applicant

Fargo Fire Department
 Cass County

UEI:

FIPS:

DUNS #: 070265871 Type:

Special District

Physical/Mailing: 637 NP Ave

Fargo, ND, 58102

Process Checklist

Initial Obligation

Obligated on October 24, 2019

[View Initial Version](#) [View Application](#)

Project Management

Active for 861 days

Work Deadline on June 30, 2021

[View Latest Time Extension](#)

[View Latest Version](#)

Project Closeout

Closeout Requested for June 30, 2021

[View Project Closeout](#)

Notes & Comments



Period of Performance Extension – Debbie LaCombe

February 14 at 4:00 PM

To: Steve Dirksen, Chris Rasmussen

We are extending the period of performance for this project from February 28, 2022 to July 31, 2022 to allow you additional time to expend the remaining balance of \$31,133.61.

Please have all change of scope requests to adjust the existing budget submitted by end of day Tuesday, February 28th.

If feel you will be unable to expend these funds by July 31, 2022, please let us know no later than April 30th so that we may allocate the funds elsewhere.

If you have any questions, contact Dave Rice at drice@nd.gov (Link: <mailto:drice@nd.gov>) or 701-328-8250.

Project S3: Scope Change #2

Routing in Progress: Initial Review (Step 2 of 3)

Scope Change Details

This request notifies NDDDES for a Scope of Work Change (SOW), Improved Project or Alternate Project, should it be advantageous to make additional improvements to or necessary to change the SOW on a project while restoring its pre-disaster design.

Request Type: Scope of Work Change

Description of Changes: As per your emailed activity notice sent February 14th regarding the extension of FY 2019 (SHSP)

The Fargo Fire Department is submitting a scope change to reallocate remaining funds left in the grant. We are requesting to spend the remaining money on the equipment listed below.

Tool Quantity Price Total

CMC Clutch 6 \$649 \$3,894

CMC Aztek Proseries 8 \$449 \$3,592

Quick Roll Ascender 8 \$94 \$752

Enforcer Load Force Cell Kit 2 \$900 \$1,800

TerrAdaptor Tripod System 1 \$5,350 \$5,350

Harken Riggers Winch 1 \$1,865 \$1,865

ASAP Fall Arrester 12 \$290 \$3,480

ASAP Sorber 12 \$50 \$600

Bolt Rigging Plate 4 \$120 \$480

PMI Wire Rope Sling 3' 8 \$49 \$392

Grant

FY 2019 State Homeland Security Program-Regional Teams

State Homeland Security Program

Declared: September 1, 2019

Closed: July 31, 2022

Work Deadline: July 31, 2022

CFDA Number: 97.067

Applicant

Fargo Fire Department

Cass County

UEI:

FIPS:

DUNS #: 070265871 Type:

Special District

Physical/Mailing: 637 NP Ave
Fargo, ND, 58102

Project

F # S #3

Regional-Fargo Fire

Department-HazMat/Search
and Rescue Response

GHSGP General HSGP

Project POP Deadline: June
30, 2021

Eligible: \$188,550.00

Federal: \$188,550.00 (100%)

Un-Expended Eligible:

\$31,133.61

PMI Wire Rope Sling 6' 8 \$63 \$504

CMC Proswivel Single 1.1" 4 \$85 \$340

CMC Proswivel Single 1.5" 4 \$94 \$376

[Show Less](#)

**Anticipated
Cost:** \$31,127.00

**Approximate
Completion
Date:** July 1, 2022

**Duplicate
Requests:** Scope Change #1 - 3) Complete

Workflow Summary

Current Step: 2) Initial Review
Description: Initial Review

Recipients: Gerald Rice

Last Advanced: Feb 24, 2022 at 11:13 AM by Chris Rasmussen

Submission: Feb 24, 2022 at 11:13 AM by Chris Rasmussen

ites & Comments



Change Request — Gerald Rice

February 28 at 11:11 AM

To: Chris Rasmussen

Chris, we reviewed your Scope Change and will approve it minus the training mannequin, that item doesn't appear on the FEMA authorized equipment list anymore. Is there anything else you want to add?

(13)

TO: BOARD OF CITY COMMISSIONERS

FROM: KENT COSTIN, DIRECTOR OF FINANCE *Ksc*

RE: STATE WATER COMMISSION COST REIMBURSEMENT APPROVAL

DATE: February 25, 2022

The existing legislation in place for State Water Commission funding related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project requires that the Fargo City Commission, Cass County Commission, and the Cass Water Resource Board approve all payment reimbursement requests prior to their submission and ultimate payment.

The attached reimbursement request has been prepared by Finance staff and is ready for processing. Your approval of the request for funds is hereby requested as required.

Suggested Motion:

Approve a State Water Commission request for cost reimbursement for Fargo-Moorhead Metropolitan Area Flood Risk Management Project costs totaling \$2,753,630.08.

February 25, 2022

Andrea J. Travnicek, PHD.
 North Dakota State Water Commission
 900 East Boulevard Avenue, Dept 770
 Bismarck, ND 58505-0850

Dear Andrea,

The Metro Flood Diversion Authority is submitting eligible costs for reimbursement request #122 pursuant to the terms and conditions of House Bill 1020 for costs incurred from January 1, 2022 - January 31, 2022 on the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. These costs are summarized in the attached cost summaries and are supported by detailed disbursement records included within this submission.

The total amount of the claim for reimbursement is \$2,753,630.08.

State Funds Available	Amount Spent Previous Request	Amount Spent This Period	State Cost Share	Reimbursement Request This Period	Balance of State Funds
\$ 364,600,000.00	\$ 333,250,092.18	\$ 5,507,260.15	50%	\$ 2,753,630.08	\$ 18,496,277.75

Project Narrative, this request:

Project Number	Project Description
V01701	Land purchase for homeowners living in areas of the diversion project.
V02825	Pay App #17 - 2 nd Street South and Main Avenue Flood Mitigation
V05004	Utility Relocation - Agreement SE-2A, Drain 27 and Diversion Inlet Structure
V05405	FEMA Local Share - Red River Pump Station
V05407	Pay App #6 & #7 - Riverwood Flood Risk Management Project - General, Pay App #3 & #4 - Riverwood Flood Risk Management Project - Electrical, Relocation Assistance for homeowners located within the project area, and televised sewer inspection
V05408	Pay App #6 & #7 - Royal Oaks & River Drive Flood Risk Management Project, Relocation Assistance for homeowners located within the project area
V05409	Recording fees
V05410	Pay App #5 - Elm Circle Flood Risk Management, Water restoration and water line maintenance
V05411	Pay App #6 & #7 - Oak Grove Flood Risk Management Project and televised sewer inspection
V05419	Pay App #17 - Storm Lift Station #24
V05422	Pay App #11 - North Side Flood Risk Mitigation

Engineering, Legal, and Admin Expense Summary, this request:

Expense Type	Amount
Engineering Services	1,071,566.81
Construction Management	1,018,788.88
Legal Services	271,288.99
Appraisal Services	147,279.79
Consulting Services	41,864.74
Property Holding Costs	3,662.72
Trustee Fees	16,480.00
Total Eligible Expense	2,589,742.18

We certify that \$101,279,533 has been expended on the acquisition of homes and that these costs are eligible for the local matching share requirements of SB 2020. Records relating to these costs are on file with the City of Fargo in the Office of the City Auditor.

The City of Fargo, Cass County Commission, and the Cass County Joint Water Resource Board have approved our request for funds as required in SB 2020. Copies of their approval letters are included.

If you have any questions relating to our request, please contact me directly.

Sincerely,



Kent Costin
Director of Finance, City of Fargo
Metro Flood Diversion Authority

Required Local Approvals:

City of Fargo

Cass County Commission

Cass County Joint Water Resource Dist.

FM Metropolitan Area Flood Risk Management Project
Summary of Monthly Expense
Period 13, 2021

Account_Number	CheckDate	Invoice_Number	Check_Number	Vendor_Number	Vendor_Name	Transaction_Amount	Expense_Description	Project_Number	Project_Description
790-0000-362.40.00	2/7/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	(439,403.22)	The TITLE Company	V05418	1367 Elm Cir N - Closing
					Total Land Purchases/ Sale	(439,403.22)			
790-7915-429.33.05	1/6/2022	2214	316830	21007	HOUSTON-MOORE GROUP LLC	57,718.61	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
790-7920-429.33.05	1/6/2022	2214	316830	21007	HOUSTON-MOORE GROUP LLC	21,773.43	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
790-7930-429.33.05	1/6/2022	2214	316830	21007	HOUSTON-MOORE GROUP LLC	13,320.30	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
790-7950-429.33.05	1/6/2022	2214	316830	21007	HOUSTON-MOORE GROUP LLC	11,373.00	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
790-7955-429.33.05	1/6/2022	2214	316830	21007	HOUSTON-MOORE GROUP LLC	2,142.17	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
790-7990-429.33.05	1/6/2022	2214	316830	21007	HOUSTON-MOORE GROUP LLC	30,508.79	PROJECT MANAGEMENT	V02827	IN EDWIN LEVY MAINTENANCE
790-7915-429.33.05	1/6/2022	28559	316857	16980	OXBOW, CITY OF	1,812.00	PROJECT MANAGEMENT	V01633	DESIGN & CONST. SUPPORT
790-7915-429.33.05	1/13/2022	2000568397	316886	24895	AECOM TECHNICAL SERVICES, INC	57,562.35	CULTURAL RESOURCES INVEST	V01004	SEA/CULTURAL RES INVEST
790-7930-429.33.05	1/27/2022	78157	317202	24895	AECOM TECHNICAL SERVICES, INC	193,980.53	11/13-12/10/21 PROF SERV	V03002	PROGRAM MGMT SERVICES
790-7915-429.33.05	1/27/2022	2000568397	317202	24895	AECOM TECHNICAL SERVICES, INC	22,303.19	CULTURAL RESOURCES INVEST	V01004	SEA/CULTURAL RES INVEST
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	24,492.36	City of Fargo	V05409	LEVEE/FLOODWALL - BELMONT
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	31,587.02	MOORE ENGINEERING INC	V05422	FLOOD MIT - NORTH SIDE
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	7,015.29	MOORE ENGINEERING INC	V05422	FLOOD MIT - NORTH SIDE
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	24,480.50	HOUSTON ENGINEERING INC	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	1,247.19	SRF CONSULTING GROUP, INC	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	43,574.13	HOUSTON ENGINEERING INC	V05408	FLOOD MIT-ROYAL OAKS AREA
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	13,638.83	HOUSTON ENGINEERING INC	V05409	FLOOD MIT-WOODCREST DRIVE
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	36,050.27	HOUSTON ENGINEERING INC	V05410	FLOOD MIT-ELM CIRCLE AREA
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	42,521.50	HOUSTON ENGINEERING INC	V05411	FLOOD MIT-OAK GROVE AREA
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	15,364.44	HOUSTON ENGINEERING INC	V05426	RR EROSION-UNIV & 52ND AV
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	3,928.75	HOUSTON ENGINEERING INC	V05427	FLOOD GEO TECH REVIEW
790-7950-429.33.05	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	6,181.47	City of Fargo	V05405	LEVEE/FLOODWALL - BELMONT
790-7950-429.33.05	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	24,047.31	MOORE ENGINEERING INC	V05422	FLOOD MIT - NORTH SIDE
790-7950-429.33.05	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	8,880.64	MOORE ENGINEERING INC	V05422	FLOOD MIT - NORTH SIDE
790-7950-429.33.05	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	64,933.20	HOUSTON ENGINEERING INC	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429.33.05	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	46,344.12	HOUSTON ENGINEERING INC	V05408	FLOOD MIT-ROYAL OAKS AREA
790-7950-429.33.05	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	39,764.66	HOUSTON ENGINEERING INC	V05409	FLOOD MIT-WOODCREST DRIVE
790-7950-429.33.05	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	5,247.14	HOUSTON ENGINEERING INC	V05410	FLOOD MIT-ELM CIRCLE AREA
790-7950-429.33.05	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	93,990.21	HOUSTON ENGINEERING INC	V05411	FLOOD MIT-OAK GROVE AREA
790-7950-429.33.05	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	4,435.25	HOUSTON ENGINEERING INC	V05426	RR EROSION-UNIV & 52ND AV
790-7950-429.33.05	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	1,257.55	HOUSTON ENGINEERING INC	V05427	FLOOD GEO TECH REVIEW
790-7950-429.33.05	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	2,500.00	BEAVER CREEK ARCHAEOLOGY	V05409	FLOOD MIT-WOODCREST DRIVE
					Total Engineering	958,744.81			
790-7950-429.33.06	1/6/2022	B8278005	316799	165	BRAUN INTERTEC CORP	13,522.25	PIPELINE TEST/OBSERVATION	V00404	TESTING - MUSTAR PIPELINE
790-7950-429.33.06	1/27/2022	B280569	317211	165	BRAUN INTERTEC CORP	701.25	MATERIALS TESTING	V00404	TESTING - MUSTAR PIPELINE
790-7950-429.33.06	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	2,221.00	P CARD BMO	V05413	FLOOD MIT-52ND AVE/UNIV DR
790-7950-429.33.06	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	295.25	P CARD BMO	V05412	DEMO - CITY WIDE
790-7950-429.33.06	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	558.50	P CARD BMO	V05413	FLOOD MIT-52ND AVE/UNIV DR
					Total Quality Testing	17,798.25			
790-7910-429.33.25	1/5/2022	11/28-12/14/21	904	17842	P CARD BMO	107,746.56	OHNSTAD TWICHELL PC	V00102	General & Admin- WIK
790-7920-429.33.25	1/5/2022	11/28-12/14/21	904	17842	P CARD BMO	45,638.86	OHNSTAD TWICHELL PC	V00102	General & Admin- WIK
790-7930-429.33.25	1/5/2022	12/15-12/27/21	904	17842	P CARD BMO	93,580.29	OHNSTAD TWICHELL PC	V00102	General & Admin- WIK
790-7940-429.33.25	1/5/2022	12/15-12/27/21	904	17842	P CARD BMO	23,275.69	OHNSTAD TWICHELL PC	V00102	General & Admin- WIK
790-7950-429.33.25	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	887.50	ERIK R JOHNSON & ASSOCIAT	V05418	FLOOD ACQUISITIONS
790-7950-429.33.25	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	102.17	P CARD BMO	V05418	FLOOD ACQUISITIONS
790-7950-429.33.25	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	225.00	ERIK R JOHNSON & ASSOCIAT	V05418	FLOOD ACQUISITIONS
					Total Land Services	271,456.07			
790-7930-429.33.32	1/13/2022	4711	316924	19899	CROWN APPRAISALS INC	100,000.00	FLOWAGE VALUATION STUDY	V05102	FLOWAGE EASEMENT-PHASE 2
790-7950-429.33.32	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	2,819.79	SRF CONSULTING GROUP, INC	V05401	DEMOLITION/LEVEE-HARWOOD
790-7950-429.33.32	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	4,500.00	PAGAN, JORGE L	V05409	FLOOD MIT-WOODCREST DRIVE
790-7950-429.33.32	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	36,000.00	PAGAN, JORGE L	V05409	FLOOD MIT-WOODCREST DRIVE
790-7950-429.33.32	2/4/2022	ES13210048-9795	ES13210048	16770	CITY OF FARGO-AUDITORS OFFICE	1,860.00	RM HOFFS & ASSOCIATES INC	V05405	LEVEE/FLOODWALL - BELMONT
					Total Appraisal Services	147,279.79			
790-7990-429.33.47	1/27/2022	25	317288	24591	PROGRAM ADVISOR SERVICES, LLC	41,864.74	PROGRAM CONSULTING	V05801	CONSULTING SERVICES
					Total Consulting Services	41,864.74			
790-7920-429.33.79	1/6/2022	28562	316857	16980	OXBOW, CITY OF	1,384.60	MOORE ENGINEERING, INC.	V02421	OXBOW MOU/MOORE PROJ MGMT
790-7920-429.33.79	1/13/2022	6888414C041	316919	20663	CH2M HILL ENGINEERS INC	446,821.53	PROGRAM MGMT	V00211	CH2M HILL-6/2019-12/2021
790-7920-429.33.79	1/13/2022	6888414C041	316919	20663	CH2M HILL ENGINEERS INC	557,120.56	P3 SUPPORT	V00212	P3 PROCUREMENT SUPPORT
790-7930-429.33.79	1/13/2022	6888414C041	316919	20663	CH2M HILL ENGINEERS INC	13,462.19	PROPERTY ACQUISITION	V00210	CH2M HILL-LAND ACQUISITION
					Total Construction Management Services	1,018,788.88			
790-7950-429.34.76	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	1,616.18	City of Fargo	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429.34.76	1/6/2022	ES13210004-9572	ES13210004	16770	CITY OF FARGO-AUDITORS OFFICE	1,736.48	City of Fargo	V05411	FLOOD MIT-OAK GROVE AREA
					Total Televised Sewer Inspections	3,352.66			

FM Metropolitan Area Flood Risk Management Project
Summary of Monthly Expense
Period 13, 2021

790-7950-429 38-99	38-99	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	209.88 SHUN SOLUTIONS USA	V05422	FLOOD MIT - NORTH SIDE
790-7950-429 38-99	38-99	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	23.00 SIMPLIFILE LC	V05409	FLOOD MIT-WOODCREST DRIVE
			Total Other Services	226.88		
790-7950-429 41-05	41-05	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	532.60 City of Fargo	V05418	FLOOD ACQUISITIONS
790-7950-429 41-05	41-05	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	251.75 City of Fargo	V05418	FLOOD ACQUISITIONS
790-7950-429 41-05	41-05	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	122.38 City of Fargo	V05418	FLOOD ACQUISITIONS
790-7950-429 62-50	62-50	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	30.60 XCEL ENERGY	V05418	FLOOD ACQUISITIONS
790-7950-429 62-50	62-50	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	38.35 XCEL ENERGY	V05418	FLOOD ACQUISITIONS
790-7950-429 62-51	62-51	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	107.40 XCEL ENERGY	V05418	FLOOD ACQUISITIONS
790-7950-429 62-51	62-51	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	108.33 XCEL ENERGY	V05418	FLOOD ACQUISITIONS
790-7950-429 62-51	62-51	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	78.14 XCEL ENERGY	V05408	FLOOD MIT-ROYAL OAKS AREA
790-7950-429 38-09	38-09	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	142.21 XCEL ENERGY	V05410	FLOOD MIT-ELM CIRCLE AREA
790-7950-429 38-99	38-99	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	1,217.84 SERVPRO OF FARGO-MOORHEAD	V05410	FLOOD MIT-ELM CIRCLE AREA
790-7950-429 38-99	38-99	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	765.00 LANEYS INC	V05410	FLOOD MIT-ELM CIRCLE AREA
			Total Property Holding Costs	3,495.64		
790-7950-429 71-30	71-30	1/31/2022 ES13210040-9751 ES13210040	16770 CITY OF FARGO-AUDITORS OFFICE	500.00 ON 1101 Walter Assamussen	V01201	Reclass Land Purchase
			Total Land Purchases	500.00		
790-7950-429 67-11	67-11	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	10,644.11 SONDREAL, ELLEN	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429 67-11	67-11	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	9,304.88 SHRELLING, TARA	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429 67-11	67-11	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	2,048.00 MONTPLAINE, SUSAN	V05408	FLOOD MIT-ROYAL OAKS AREA
			Total Relocation Assistance	22,596.99		
790-7950-429 73-52	73-52	1/20/2022 PAY #17	827 INDUSTRIAL BUILDERS INC	6,750.00 FLOOD MITIGATION	V02825	2ND ST'S FLOOD MITIGATION
790-7950-429 73-52	73-52	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	98,021.57 SELLIN BROS INC	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429 73-52	73-52	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	3,776.25 RICK ELECTRIC INC	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429 73-52	73-52	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	3,216.70 RICK ELECTRIC INC	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429 73-52	73-52	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	65,550.17 MASTER CONSTRUCTION CO IN	V05408	FLOOD MIT-ROYAL OAKS AREA
790-7950-429 73-52	73-52	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	317,405.75 MEYER CONTRACTING INC	V05411	FLOOD MIT-OAK GROVE AREA
790-7950-429 73-52	73-52	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	1,581,376.35 KEY CONTRACTING INC	V05422	FLOOD MIT - NORTH SIDE
790-7950-429 73-52	73-52	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	121,506.48 SELLIN BROS INC	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429 73-52	73-52	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	30,165.58 MASTER CONSTRUCTION CO IN	V05408	FLOOD MIT-ROYAL OAKS AREA
790-7950-429 73-52	73-52	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	22,875.48 KEY CONTRACTING INC	V05410	FLOOD MIT-ELM CIRCLE AREA
790-7950-429 73-52	73-52	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	151,010.90 MEYER CONTRACTING INC	V05411	FLOOD MIT-OAK GROVE AREA
			Total Flood Control	2,411,655.21		
790-7950-429 73-58	73-58	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	206,783.10 City of Fargo	V05419	STORM LIFT STATION #26
790-7950-429 73-58	73-58	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	47,198.70 City of Fargo	V05419	STORM LIFT STATION #26
			Total Storm Sewer Systems	253,981.80		
790-7950-429 73-62	73-62	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	169,081.07 City of Fargo	V05405	LEEVE/FLOODWALL - BELMONT
790-7950-429 73-62	73-62	2/4/2022 ES13210048-9795 ES13210048	16770 CITY OF FARGO-AUDITORS OFFICE	65,408.88 City of Fargo	V05405	LEEVE/FLOODWALL - BELMONT
			Total Water Infrastructure	174,489.95		
790-7950-429 73-70	73-70	1/20/2022 RIQ #2	9242 CASS RURAL WATER USERS DIST	468,790.70 DRAIN 27, INLET, STRUCTUR	V05004	SE-2A, DRAIN 27, & INLET
			Total Utilities	468,790.70		
790-7950-429 74-10	74-10	1/6/2022 ES13210004-9572 ES13210004	16770 CITY OF FARGO-AUDITORS OFFICE	21,327.00 City of Fargo	V05405	LEEVE/FLOODWALL - BELMONT
			Total Machinery & Equipment	21,327.00		
			Total Eligible Expenses (Period 13)	5,376,946.15		

FM Metropolitan Area Flood Risk Management Project
Summary of Monthly Expense
January, 2022

Account_Number	CheckDate	Invoice_Number	Check_Number	Vendor_Number	Vendor_Name	Transaction_Amount	Expense_Description	Project_No	Project_Description
790-7990-429.33-05 33-05	2/3/2022	78430	317358	11604	ADVANCED ENGINEERING INC Total Engineering	112,822.00 112,822.00	DEC ENGINEERING SERVICES	V00302	PROGRAM MGMT SERVICES
790-7940-429.33-06 33-06	2/3/2022	8281681	317372	165	BRAUN INTERTEC CORP Total Quality Testing	1,012.00 1,012.00	MATERIALS TESTING	V00402	TESTING - WP-43 & WP-28A
790-7990-429.34-57 34-57	1/27/2022	0002066-697	2066	16770	CITY OF FARGO-AUDITORS OFFICE Total FMDA Trustee Fees BND	16,480.00 16,480.00	BND TRUSTEE FEE 1/2022	V08502	MONTHLY TRUSTEE FEE
Total Eligible Expense (Period 1)						130,314.00			
Total Eligible Expenses (Period 13 & Period 1)						5,507,260.15			

March 7, 2022

Honorable Board of City Commissioners
City Hall
225 4th St N, Fargo, ND 58102

(14)

Commissioners:

Through the RFP process, rates were secured for four (4) forestry related contracted services. One new proposal was received for the recent Landscape Maintenance RFP. The other three agreements - city commission previously approved along with the option to negotiate and extend additional seasons.

Agreement status:

1. Tree/Stump Removal - 2022 will be season 2 of a 5-year agreement (Cougar Tree Care, Inc.)
2. Landscape Maintenance Services – 2022 will be season 1 of a 5-year agreement (All-Terrain Grounds Maintenance)
3. Tree Injection – 2022 will be season 4 of a 5-year agreement (Paul Bunyan Nurseries)

<u>Activity/Service</u>	<u>2021 rate</u>	<u>2022 proposed rates</u>
Tree Removal	\$19.14 per diameter inch	\$22.00 per diameter inch
Stump Removal	\$149.00 per stump	\$171.35 per stump
Landscape Maintenance	\$2370 bi-weekly	no change
Tree Injection	\$9.25 (med. rate) per diameter inch	no change

Considering last year's numbers, approximate increases would be - \$17,700 for tree removals, and \$3,500 for stump removals. The physical demands, especially for tree removal, have challenged our contractor on employee retention and maintaining reliable staff. However, the 2022 forestry budget can support the proposed rate changes.

Recommended motion:

Move to approve 2022 contracted forestry services agreements with Cougar Tree Care, Inc. for tree and stump removal (RFP21023), All-Terrain Grounds Maintenance for landscape bed maintenance (RFP22004), and Paul Bunyan Nurseries for injection services (RFP19008).

Your approval of this request is appreciated.

Sincerely,



Scott Liudahl, City Forester

Cc: Ben Dow

Bruce Grubb

Kent Costin

Commission 2022 contract agreements.doc

Tree and Stump Removal Services - 2022

I. Agreement

This agreement is between the City of Fargo (City) and Cougar Tree Care, Inc. (Contractor) to provide tree and stump removal services for the City. This agreement shall commence upon signing by both parties and expire on December 31, 2022. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for three (3) additional one (1) year extensions, provided the negotiated extension is signed by both parties on or around January 1st of the contract year.

II. Scope of Services Summary

Work shall include all labor, materials, equipment, supplies and services required for the removal of trees and stumps in accordance with forestry department specifications. Contractor must comply with all State, Federal and Local laws, regulations and ordinances applicable to the operation of Contractor's equipment.

III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds.

IV. Contractor's Compensation and Method of Payment

Partial billing is acceptable at any time. Contractor may be subject to Liquidated Damages per the latest version of the City of Fargo Standard Specification for Construction for removals not completed within the allowed time frame.

V. Termination of the Agreement

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

VI. Assignability

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

VII. Hold Harmless and Insurance

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. Contractor's employees must be covered by North Dakota's Workers Compensation. Contractor shall carry appropriate liability insurance coverage, including but not limited to Public Liability Insurance in the amount of \$1,000,000 per person, \$500,000 per accident, and property damage in the amount of \$300,000 per accident. Contractor shall provide City a Certificate of Insurance naming the City of Fargo as an additional insured, and such insurance must be maintained during the term of this Agreement and any extension agreed to thereafter.

VIII. Contractor Records

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or its authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

IX. Monitoring and Evaluation

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

X. Independence of Recipient

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

XI. Conflict of Interest

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

XII. Entire Agreement

This agreement constitutes the entire agreement between the parties.

XIII. Law

This Agreement shall be construed under and in accordance with the laws of the State of North Dakota.

XIV. Time of the Essence

Time is of the essence of all provisions of this Agreement except as may be otherwise specifically stated herein.

XV. Third Parties

There are no third-party beneficiaries of this Agreement and except by way of assignment, no third-party may acquire any rights or incur any liabilities hereunder.

XVI. Headings

The subject headings of the paragraphs of this agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 2-3-22

CONTRACTOR

Lougar Tree Care Inc.

By: James Danielson

Its: President

Date: _____

CITY OF FARGO, North Dakota, a North
Dakota Municipal Corporation

Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

Landscape Maintenance Services - 2022

I. Agreement

This agreement is between the City of Fargo (City) and All-Terrain Grounds Maintenance (Contractor) to provide landscape maintenance services for the City. This agreement shall commence upon signing by both parties and expire on approximately October 31, 2022. The term of this agreement may be extended for one-year periods for a maximum of five (5) additional years, if approved and accepted in writing by both the contractor and the city prior to the season start of the appropriate year.

II. Scope of Services Summary

Work shall include all labor, materials, equipment, supplies and services required for the maintenance of trees, shrubs, perennials, and planting beds. Services shall include keeping planting beds and mulch/rock areas weed free, and collecting and removing debris. Contractor must comply with all State, Federal and Local laws, regulations and ordinances applicable to the operation of Contractor's equipment.

III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds.

IV. Contractor's Compensation and Method of Payment

City will compensate Contractor per bi-weekly price. Invoices for each location shall be submitted monthly.

V. Termination of the Agreement

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

VI. Assignability

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

VII. Hold Harmless and Insurance

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. Contractor's employees must be covered by North Dakota's Workers Compensation. Contractor shall carry appropriate liability insurance coverage, including but not limited to Public Liability Insurance in the amount of \$1,000,000 per person, \$500,000 per accident, and property damage in the amount of \$300,000 per accident. Contractor shall provide City a Certificate of Insurance naming the City of Fargo as an additional insured, and such insurance must be maintained during the term of this Agreement and any extension agreed to thereafter.

VIII. Contractor Records

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or its authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

IX. Monitoring and Evaluation

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

X. Independence of Recipient

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

XI. Conflict of Interest

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

XII. Entire Agreement

This agreement constitutes the entire agreement between the parties.

XIII. Law

This Agreement shall be construed under and in accordance with the laws of the State of North Dakota.

XIV. Time of the Essence

Time is of the essence of all provisions of this Agreement except as may be otherwise specifically stated herein.

XV. Third Parties

There are no third-party beneficiaries of this Agreement and except by way of assignment, no third-party may acquire any rights or incur any liabilities hereunder.

XVI. Headings

The subject headings of the paragraphs of this agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 1/26/2022

CONTRACTOR

Matt So

By: Matt Ungew

Its: CRM

Date: _____

CITY OF FARGO, North Dakota, a North
Dakota Municipal Corporation

Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

Tree Injection Services - 2022

I. Agreement

This agreement is between the City of Fargo (City) and Paul Bunyan Nurseries (Contractor) to provide tree injection services for the City. This agreement shall commence upon signing by both parties and expire on December 31, 2022. The terms of this agreement may be extended, if accepted and signed by the Contractor and City, for one (1) additional year extension, provided the negotiated extension is signed by parties on or around February 15th of the contract year.

II. Scope of Services Summary

Work shall include all labor, materials, equipment, supplies and services required for tree injection in accordance with forestry department specifications. Contractor must comply with all State, Federal and Local laws, regulations and ordinances applicable to the operation of Contractor's equipment.

III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds.

IV. Contractor's Compensation and Method of Payment

Partial billing is acceptable at any time. City will compensate Contractor per proposal price.

V. Termination of the Agreement

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

VI. Assignability

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

VII. Hold Harmless and Insurance

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. Contractor's employees must be covered by North Dakota's Workers Compensation. Contractor shall carry appropriate liability insurance coverage, including but not limited to Public Liability Insurance in the amount of \$1,000,000 per person, \$500,000 per accident, and property damage in the amount of \$300,000 per accident. Contractor shall provide City a Certificate of Insurance naming the City of Fargo as an additional insured, and such insurance must be maintained during the term of this Agreement and any extension agreed to thereafter.

VIII. Contractor Records

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or its authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

IX. Monitoring and Evaluation

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

X. Independence of Recipient

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

XI. Conflict of Interest

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

XII. Entire Agreement

This agreement constitutes the entire agreement between the parties.

XIII. Law

This Agreement shall be construed under and in accordance with the laws of the State of North Dakota.

XIV. Time of the Essence

Time is of the essence of all provisions of this Agreement except as may be otherwise specifically stated herein.

XV. Third Parties

There are no third-party beneficiaries of this Agreement and except by way of assignment, no third party may acquire any rights or incur any liabilities hereunder.

XVI. Headings

The subject headings of the paragraphs of this agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 12-14-21

CONTRACTOR



By: Steven Kiemele

Its: CFO

Date: _____

CITY OF FARGO, North Dakota, a North
Dakota Municipal Corporation

Timothy J. Mahoney, Mayor


ATTEST:

Steve Sprague, City Auditor

15

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: MARCH 1, 2022

**RE: NOTICE OF GRANT AWARD AMENDMENT FROM NORTH
DAKOTA DEPARTMENT OF HEALTH FOR RYAN WHITE PART
B PROGRAM FOR ADDITIONAL FUNDS OF \$30,000
G19.1256B CFDA 93.917**

This is a request to approve the grant amendment from the North Dakota Department of Health the agreement G19.1256B for Ryan White Part B Program. The amendment will provide additional funds of \$30,000.

Budget Adjustments:

2022 Revenue		
Ryan White	101-0000-331-12-09	\$30,000
2022 Expense		
Ryan White	101-6040-451-33-58	\$30,000

If you have questions please contact Desi Fleming at 241.1380.

Suggested Motion: Move to approve the grant award amendment from North Dakota Department of Health.

DF/lls
Enclosure

**Page 1 NOTICE OF GRANT AWARD**NORTH DAKOTA DEPARTMENT OF HEALTH
SFN 53771 (01-2020)


Grant Number G19.1256B	CFDA Name HIV Care Formula Grants	CFDA Number 93.917	
FAIN Number X07HA00043-31	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 4/12/2021	Grant End Date 3/31/2022
Federal Award Date 03/18/2021	Federal Awarding Agency Health Resources Services Administration (HRSA)		
This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.			
Title of Project/Program Ryan White Part B Program		North Dakota Department of Health (NDDoH) Project Code 2201 HLH 5432-03: \$60,000; 2201 HLH 5432-09: \$194,000	
Grantee Name Fargo Cass Public Health		Project Director Lindsey VanderBusch	
Address 1240 25th St S		Address 600 East Boulevard Ave, Dept 301	
City/State/ZIP Code Fargo, ND 58103		City/State/ZIP Code Bismarck, ND 58505-0200	
Contact Name Larry Anenson		Contact Name Lindsey VanderBusch	
Telephone Number 701-241-1360		Telephone Number 701.328.4555	
Email Address LAnenson@FargoND.gov		Email Address lvanderbusch@nd.gov	
	NDDoH Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$30,000	\$0	\$30,000
Previous Funds Awarded	\$224,000	\$0	\$224,000
Total Funds Awarded	\$254,000	\$0	\$254,000
Indirect Rate (Check One)	<input type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimus rate of 10%	<input checked="" type="checkbox"/> Negotiated/Approved rate of 10 %
Scope of Service The amendment provides additional funding of \$30,000 for the continued support of the Ryan White Part B Program as noted in the original agreement.			
Reporting Requirements All reporting requirements of the original agreement remain the same.			
Special Conditions All special conditions of the original agreement remain the same.			
This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2019 to June 30, 2021 [Fiscal Services Use Only: <input type="checkbox"/> Requirements Received; <input type="checkbox"/> Questionnaire received] and (2) applicable State and Federal regulations.			
Evidence of Grantee's Acceptance		Evidence of NDDoH Acceptance	
Date 3/3/22	Signature Desi Fleming	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Lindsey VanderBusch, Director Division of Sexually Transmitted and Bloodborne Diseases	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Dirk Wilke, J.D., M.B.A., Chief of Staff	
If attachments are referenced, they must be returned with the signed award. If you did not receive attachments as indicated, contact the Program Director identified above.			



(16)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: MARCH 3, 2022

**RE: NOTICE OF GRANT AWARD FROM AIDS UNITED FOR THE
EXPANDING SSP CAPACITY TO RESPOND TO COVID-19
INITIATIVE, \$100,000**

This is a request to approve the grant from AIDS United for \$100,000 for the Expanding SSP Capacity to Respond to COVID-19 initiative from the CDC to assist operations at the Syringe Services operations of Fargo Cass Public Health.

No budget adjustments

If you have questions please contact Desi Fleming at 241.1380.

Suggested Motion: Move to approve the grant award amendment from AIDS United.

DF/lls
Enclosure



1101 14 St., NW, Suite 300
Washington, DC 20005
(202) 408-4848
www.aidsunited.org

Robyn Litke Sall
Fargo Cass Public Health
1240 25th St S
Fargo, ND 58103

February 16, 2022

Dear Robyn Litke Sall:

Congratulations! AIDS United has awarded a grant of \$100,000 from the Expanding SSP Capacity to Respond to COVID-19 initiative to Fargo Cass Public Health to support "SSPs & COVID-19," a project support grant. The Expanding SSP Capacity to Respond to COVID-19 Initiative is generously supported by the Centers for Disease Control and Prevention. This grant is contingent upon AIDS United's receipt of those funds in addition to the terms outlined below.

Please review and return the signed grant agreement to AIDS United by **February 18, 2022**. Payment of this grant will be made only after receipt of this grant agreement signed by the authorized representative of your organization and countersigned by an AIDS United signatory. Payments are expected to follow the disbursement schedule below, provided the grant agreement is executed and required reports are submitted in accordance with terms set forth in this agreement.

Payment of this grant will be made in three (3) installments as follows:

- **In February 2022 (33.33% of the base grant award)**
- **By August 2022 (33.33% of the base grant award)**
- **By February 2023 (remaining 33.33% of the base grant award), pending satisfactory completion and receipt of any reporting, requirements of and deadlines for which are outlined in Clause 4.**

This grant is made on the following conditions:

1. Fargo Cass Public Health (hereafter referred to as "Grantee") understands that the grant period for these funds is **February 22, 2022, through July 31, 2023** ("Term"). All grant activity must be completed by July 31, 2023. Funds not used after the identified project period must be returned to AIDS United unless the Grantee requests in writing to and receives written approval from AIDS United for a no-cost extension.
2. The Grantee understands that these funds may only be used to support the activities outlined in its proposal or revised and approved project objectives. Any portion of this grant not used for these stated purposes must be repaid to AIDS United. *Any change in purpose or activity must be requested in writing by the Grantee and **approved in advance** in writing by AIDS United.* Any change in the grant budget amounting to more than **25% of any one line item or 10% of the overall budget** must also be requested by the Grantee and **approved in advance** by AIDS United.
3. The Grantee understands that the **indirect rate is capped at 10%** unless the Grantee has a Negotiated Indirect Cost Rate Agreement (NICRA). The Grantee understand that the **purchases of syringes, cookers, and vaccines are not allowable** with these grant funds.

4. **The Grantee agrees that no portion of these funds will be used for any lobbying-related activities and/or events of any kind**, defined as follows: any attempt to influence specific legislation either by direct or grassroots lobbying; influencing the outcome of any specific voter registration drive; participating in or intervening in (including the publishing or distribution of statements for) any campaign on behalf of (or in opposition to) any candidate for public office; making grants to individuals for any purpose; or supporting any non-charitable or non-educational purpose. ***Absolutely NO exceptions will be considered, allowed, or excused. For more details, see the attached "Grant Agreement Appendix." The Grantee further agrees to consult its own attorney if assistance is needed in verifying an appropriate level and scope of lobbying activities.***

5. Reporting Requirements – The Grantee agrees to submit to AIDS United:
 - a) **Interim reports and interim expenditure reports** no later than the **7th of each month or the following Monday if the 7th falls on a weekend**,
 - b) **Quarterly reporting** no later than the **14th of each quarter**.
 - c) A **general ledger report of expenditures** from the grantee's accounting system **every 6 months**, due no more than 4 weeks after the 6-month period has ended, or by the dates listed below:
 - Interim Report #1: Period, February 15-August 15, 2022. Report due **September 12, 2022**.
 - Interim Report #2: Period, August 16, 2022 - February 15, 2023. Report due **March 15, 2023**.
 - Final Report: Period, February 16, 2023 - August 15, 2023. **Report Due September 12, 2023**.
 - d) Funds for the 2nd and 3rd grant payments will not be disbursed if any component of any interim report is outstanding. ***If any component of an interim report is not received within 3 months of its due date, the grant agreement will be terminated and subsequent payment forfeited.***
 - e) A **final progress report and final expenditure report** due within 45 days of the end of the program period but by no later than **September 15, 2023**. This report should include information on program outcomes.
 - f) The Grantee understands that if they do not meet their report schedule or fail to adhere to a corrective action plan, if put in place, they will be ineligible to apply for any other AIDS United funding until resolved and will not receive any remaining grant payments unless and until any outstanding issues are resolved.

6. The Grantee agrees to allow AIDS United to share grant applications, reports, and other grantee documents related to the project with any initiative funder, if requested.

7. Grantee agrees to phone or video call check-ins with AIDS United staff, at a frequency to be determined by AIDS United, and understands that failure to do so could lead to and include termination of funding.

8. The Grantee agrees to notify AIDS United immediately, in writing, of any change in its tax-exempt status, its executive staff or key staff responsible for achieving the grant purpose, or any other change in its program that would affect its ability to achieve the grant purpose. ***If any staff affiliated with this project resigns or is terminated from the organization, written notification of the departure must be submitted to AIDS United no more than five (5) business days following the departure.*** If a fiscal sponsorship is involved, the Grantee will promptly notify AIDS United of any changes in the sponsorship agreement or in the sponsor relationship. Failure to notify AIDS United of any changes as described above may lead up to and include termination of funding.

9. The Grantee agrees to designate appropriate representative(s) who will monitor grant activities related to both reporting and evaluation requirements and liaise with other relevant staff members and

leadership at the Grantee organization to ensure progress and compliance. The Grantee will facilitate and participate in any evaluation and technical assistance activities as appropriate and as requested by AIDS United or its contractors. Additionally, if the Grantee has been selected to receive technical assistance as part of this grant award, the appropriate staff and/or board representatives are expected to participate fully in the provision of that assistance. **Diligent, timely participation in these efforts is required as a term of this grant. Late reporting related to progress reports and evaluation may result in delayed disbursement of grant payments. Failure to participate in the evaluation and/or technical assistance process may jeopardize continued funding that may lead up to and include termination of funding.**

10. The Grantee will work with AIDS United staff to designate the appropriate staff person(s) to participate in other grantee meetings (in-person, online, or otherwise), local or regional advocacy or community meetings/events, and any other required grantee meetings. AIDS United reserves the right to select staff who should attend based on the role the individual(s) plays with respect to the specific content and purpose of the meeting.
11. The Grantee understands that audits and site visits by AIDS United are possible and agrees to facilitate these if requested.
12. The Grantee acknowledges that neither the making of the grant nor the disbursement of funds under it shall constitute or imply an obligation on the part of the AIDS United to provide funds to the Grantee beyond those described in this grant, to accept or approve any future funding request by the Grantee for this or any other program, or to provide continuation support for the funded project beyond the terms of this grant.
13. The Grantee hereby agrees to indemnify and hold AIDS United (including its officers, directors, employees, agents, and donors) harmless from any and all damages, liabilities, suits, claims, liens, taxes, or demands of whatsoever kind or nature arising out the Grantee's use (or failure to use) or distribution of the funds received by it under this grant. The Grantee further agrees to defend AIDS United from any loss or expense resulting therefore, including AIDS United's costs, expenses, and attorney's fees.
14. The Grantee agrees to acknowledge AIDS United and the Centers for Disease Control and Prevention in press announcements, articles, program brochures, and all other materials and information related to this grant. When referring to this grant, all efforts should be made to include the official name of this program: the *Expanding SSP Capacity to Respond to COVID-19 initiative*. All aforementioned press announcements, articles, program brochures, and other materials (including online materials) **must be reviewed and approved by AIDS United prior to public release.**
15. The Grantee agrees to share with AIDS United any news articles, stories, or other media that mentions, highlights, or features the program supported by this grant. The Grantee will also provide information for AIDS United and the Centers for Disease Control and Prevention publications and communications as requested.
16. AIDS United retains the right to use grant report narrative, photos, or other materials or documentation shared by the Grantee that are not deemed sensitive or confidential in nature by the Grantee in any format including, but not limited to, the funders' websites, annual reports, or other electronic or hard-copy publications. Such use may include but is not limited to the AIDS United website, annual report, or other publications. AIDS United and the Centers for Disease Control and Prevention retain the rights

and shared ownership with respect to publications, photos, and other materials produced through this grant. AIDS United also retains the right to publicize the names of its grant recipients.

17. This Agreement and all claims arising under it are governed by and shall be construed and enforced according to the laws of the District of Columbia. Notwithstanding the immediately previous sentence, the parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 1700 *et. seq.* (*E-Sign Act*). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to this Agreement.

18. Termination and Suspension

AIDS United has the right in its sole judgment and discretion to terminate or suspend this agreement and any and all payments under this grant agreement. Any such suspension will continue until such time as AIDS United determines, in its sole discretion, to resume a disbursement of funds under this grant agreement. Upon any such suspension or termination, AIDS United will have no further obligations (including, without limitation, any payment obligations) to Grantee and the Grantee agrees to return any unused funds from this grant.

AIDS United may, by providing thirty (30) days written notice, terminate this Agreement at any time and for any reason, whether with or without cause, and including termination for the convenience of AIDS United. Upon 30-day written notice, termination may also occur by mutual written agreement between AIDS United and the grantee.

In addition to AIDS United's unconditional right described above, suspension or termination may occur in the event of, but is not limited to any of the following:

- a. The funder of this initiative suspends or alters any financial contributions to AIDS United for the benefit of this initiative. The Grant Suspension will continue until such time as AIDS United determines to resume grantee activities and/or payment obligations.
- b. If Grantee fails, refuses or neglects to perform and/or materially breaches any of its obligations under this grant agreement or commits any criminal misconduct, gross negligence or other intentionally tortious act.
- c. AIDS United shall undertake reasonable efforts to confirm any such reason for suspension or termination made under this grant agreement, but in no event will the effectiveness of any such suspension be subject to (a) AIDS United sending any written conformation thereof or (b) Grantee's actual receipt of such written confirmation. Moreover, any failure by AIDS United to send such written confirmation will not constitute a breach by AIDS United of this grant agreement.


19. Either party may, by providing thirty (30) days written notice to the other, terminate this Agreement at any time and for any reason, whether with or without cause, and including termination for the convenience of either. Upon termination of this Agreement, all fees and expenses accruing hereunder shall cease and no further payment to the Grantee pursuant hereto shall accrue or be payable, except with respect to amounts accrued and unpaid at the time of termination for periods prior to termination. Upon termination, Grantee agrees to return any unused funds from this grant.

20. AIDS United reserves the right to consider this Agreement null and void if any terms or conditions outlined in this Agreement are not met.

21. Changes to this Agreement must be submitted in written form and agreed upon by both parties.

Finally, this collaboration with AIDS United often involves an array of partners (AIDS United staff, grantees, capacity building providers, evaluators, and funding partners) and resources that we hope will make for a rich and rewarding experience. As a Grantee and an important partner in this initiative, please do not hesitate to contact Angel Gomez at agomez@aidsunited.org, should you need further explanation in this regard.

To accept the terms and conditions of this grant, please sign the Agreement below and return it to AIDS United via Adobe Sign. We look forward to working with you on this exciting and important initiative.

On behalf of AIDS United:	On behalf of Fargo Cass Public Health:
Signature	Signature of Authorized Representative 
<u>John E. Roane, Jr.</u> Printed Name	<u>Desi Fleming</u> Printed Name
<u>Vice President of Operations</u> Title	<u>Director of Public Health</u> Title
 Date	<u>March 3, 2022</u> Date
	Signature of Authorized Representative <u>Timothy J. Mahoney</u> Title Date

Grant Agreement Appendix I
Lobbying vs. Advocacy: Guidelines for AIDS United Grantees

While all lobbying is advocacy, not all advocacy is lobbying. **Advocacy** involves speaking out on issues of concern. This can mean something as formal as talking to your legislator; as intensive as engaging in efforts to effect a change in laws or policies; or as simple as telling your neighbor about the impact of a law.

There are two types of lobbying. **Direct lobbying** is a communication with a legislator (federal, state, or local) or legislative staff member that refers to specific legislation and takes a position on that legislation. **Grassroots lobbying** is a communication with the public that refers to specific legislation, reflects a view of that legislation, and contains a call to action.

501(c)(3) public charities (including public foundations) can lobby within the generous limits allowed by federal law. How much lobbying the organization can do depends on which of two sets of rules the organization chooses to fall under -- the "insubstantial part test" or the "501(h) expenditure test."

The "Insubstantial Part" Test

The first—and default—method is the rather vague insubstantial part test. This test requires that lobbying be limited to an insubstantial part of an organization's overall activity. Under this test, there are no clear definitions regarding what constitutes lobbying, what an "insubstantial part" is, or how to measure activities. If an organization measures its lobbying limit by the insubstantial part test, it should work with an attorney and accountant to create parameters and definitions for the organization. An organization is subject to this test unless until it elects otherwise.

The "501(h) Expenditure" Test

The second method to measure lobbying activity is the 501(h)-expenditure test. While the name reflects a section of the tax code, public charities do not change their 501(c)(3) status by choosing this method to measure their lobbying. This test provides clearer guidance, as it defines lobbying, provides an exact dollar-based lobbying limit, and measures lobbying based upon an organization's expenditures. Therefore, if an activity creates no cost for the organization then it does not count against its lobbying limit. An organization must affirmatively elect—through a one-time filing of Form 5768—to be covered by this test.

For more on lobbying, the 501(h) test, and expenditure guidelines, please see the Alliance for Justice's "Foundation Advocacy Grants: What Grantees Need to Know" publication online:

<https://bolderadvocacy.org/wp-content/uploads/2019/04/Foundation-Advocacy-Grants-Final.pdf>.

AIDS United acknowledges the Alliance for Justice (<http://www.afj.org>), the resource of which were indispensable in the creation of this appendix.

MEMORANDUM

17

TO: Fargo City Commission

FROM: Jim Gilmour, Director of Strategic Planning and Research



DATE: March 3, 2022

SUBJECT: Geotechnical and Quality Control Services – Civic Center Parking Ramp

The City of Fargo needs geotechnical and quality control services for the Civic Center Parking Ramp vertical expansion. Walker Consultants is the engineer for this project, so they obtained two proposals for these services.

Walker recommends the proposals from Braun Intertec. The recommendation letter and proposals are attached.

Recommended Motion:

Approve the proposals from Braun Intertec for geotechnical consulting, special inspecting and testing services for the Civic Center Parking Ramp vertical expansion.



1660 South Highway 100, Suite 545
Minneapolis, MN 55416

952.595.9116
walkerconsultants.com

March 2, 2022

Mr. James Gilmour
Director of Strategic Planning
City of Fargo
225 4th St. North
Fargo, ND 58102

*Re: Geotechnical and Quality Control
Services for Civic Center Garage Construction
Walker Project #21-004791.10*

Dear Mr. Gilmour:

As you are aware the City of Fargo (City) has contracted with Walker Consultants for the architectural/engineering design of the Civic Center Garage Vertical Expansion. To begin this work, Walker Consultants has reviewed the existing construction documents and quantified existing foundation loads for the expansion work. As a result of our findings, Walker recommends additional geotechnical review to confirm foundation loading capacities applicable for the garage expansion. In addition to this work, certain code and design professional required tests and inspections shall occur during the construction process.

To accommodate these necessary project components, Walker Consultants has requested estimated cost proposals for this work from local geotechnical and testing services. The firms requested to provide proposals included Northern Technologies, LLC and Braun Intertec. Reviewing these proposals, Walker Consultants recommends the City of Fargo to contract with Braun Intertec as their proposal response displayed recent beneficial site area geotechnical knowledge, and the best understanding of the requested work.

Walker recommends the City of Fargo contracts directly with Braun Intertec authorizing estimated professional Geotechnical and Quality Control fees. Walker anticipates providing additional technical assistance to the City for managing this relationship through requirements of the construction documents. During construction activity, the successful general contractor shall assist with coordination of service delivery.

For your use find attached the proposal defining the estimated Geotechnical and Quality Control services recommended for procurement.

Sincerely,

WALKER CONSULTANTS

A handwritten signature in dark ink, appearing to read "Scott Froemming".

Scott Froemming, PE
Vice President

Enclosure(s) Braun Intertec Proposals dated February 3, & 10, 2022.



Braun Intertec Corporation
526 10th Street NE, Suite 300
P.O. Box 485
West Fargo, ND 58078

Phone: 701.232.8701
Fax: 701.232.7817
Web: braunintertec.com

February 3, 2022

Proposal QTB153082

Scott R. Froemming, PE
Walker Consultants
1660 S. Highway 100, Suite 545
Minneapolis, MN 55416

Re: Proposal for Geotechnical Consulting
Radisson Parking Ramp
502 NP Avenue
Fargo, North Dakota

Dear Mr. Froemming:

Braun Intertec Corporation respectfully submits this proposal to provide geotechnical consulting for the additional level of parking planned at the referenced site.

Our Understanding of Project

The project involves adding another level of parking to the existing structure. Per our communication with you we understand the original construction plans indicate foundations were designed to accommodate an additional level of parking when it was originally constructed. Your current calculations indicate that a few foundations have loads that exceed the soil capacities presented on the structural plans. Overstressing of two foundations is 10 to 20 percent and caused by live loads. You have requested us to provide consulting to evaluate the bearing capacity of the foundations, specifically what impact the overstressing may have on them and the long-term performance of the structure.

Purpose

The purpose of our consulting is to provide recommendations related to impacts from the overstressing on the two foundations.

Scope of Services

The following tasks are proposed to help achieve the stated purpose. If unfavorable or unforeseen conditions are encountered at any point during the completion of the tasks that lead us to recommend an expanded scope of services, we will contact you to discuss the conditions before resuming work.

Review Existing Geotechnical Information

We understand the Twin City Testing report from the design of the parking ramp has not been located. There are a few folks at Braun Intertec who worked for Twin City Testing during this time and may have some connections with the people who wrote this report. If desired, we can reach out to folks in our network to see if we can assist in locating the original report.

AA/EOE

We also have existing borings throughout downtown Fargo. Specifically, we performed a geotechnical evaluation for the Block 9 building on the west side of the parking ramp and the Fargo City Hall on the east side of the parking ramp. We will review this data in conjunction with the notes on the Radisson Parking Ramp structural plans to evaluate the anticipated bearing stratum for the drilled shaft foundations.

Site Reconnaissance

We will visit the site to observe the structure in the vicinity of the anticipated overloaded columns. These columns are presumably currently the heaviest loaded columns as well. We will be looking to identify if there are signs of distress in the structure that may indicate these columns have moved relative to the current loads on them. This will provide some additional context in evaluating the potential impact of increasing the loads on the current foundations.

Calculations

We will use the available data and current design standards to calculate the ultimate geotechnical capacity of the foundations with the dimensions and minimum installation lengths shown on the structural design plans. We can then provide the theoretical factor of safety against failure under the supplied dead and live loads and calculate anticipated settlements.

Reporting

We will provide a letter discussing the results of our calculations and associated considerations for performance of the structure.

Only an electronic copy of our report will be submitted to you unless you request otherwise. At your request, the report can also be sent to additional project team members.

Schedule

We can begin work within 5 days of written authorization. Our work will likely take 1 week to complete, though we will update you on our progress and results as the work takes place. We anticipate submitting final deliverables with approximately 2 weeks of authorization.

If our proposed scope of services cannot be completed according to this schedule due to circumstances beyond our control, we may need to revise this proposal prior to completing the remaining tasks.

Fees

We will furnish the services described in this proposal for an estimated fee of \$4,500, which includes up to 1 hour of post deliverable consulting time. Additional requests for meetings, consulting or modifications to the report will be billed at a rate of \$255 per hour. We are attaching a tabulation showing hourly and/or unit rates associated with our proposed scope of services.

Our work may extend over several invoicing periods. As such, for work that is performed during the course of each invoicing period, we will submit partial progress invoices.

Additional Services

The costs herein assume that it will be satisfactory to demonstrate from the existing data that risks due to overstressing of the foundations are relatively minor. If our analysis indicates further exploration is needed (assuming the Twin City Testing report is not found) we can complete a soil boring at the project site. We anticipate the costs for an additional 120-foot-deep boring, laboratory testing, and engineering to incorporate the results into our analysis will be \$10,000. Further testing could also be done to attempt to identify the actual depth of the drilled shaft foundations relative to what is listed on the plans. Scopes and costs for these services can be further discussed as needed.

Walker Consultants
Proposal QTB153082
February 3, 2022
Page 4

General Remarks

We appreciate the opportunity to present this proposal to you. *Please sign and return a copy to us in its entirety.*

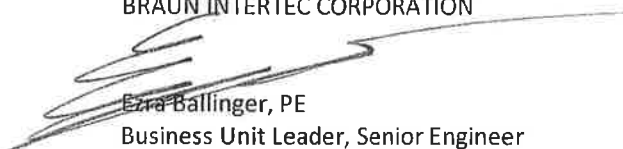
The proposed fee is based on the scope of services described and the assumptions that our services will be authorized within 30 days and that others will not delay us beyond our proposed schedule.

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.


To have questions answered or schedule a time to meet and discuss our approach to this project further, please call us at 701.232.8701.

Sincerely,

BRAUN INTERTEC CORPORATION



Ezra Ballinger, PE
Business Unit Leader, Senior Engineer



Steven P. Nagle, PE
Vice President, Principal Engineer

Attachments:
Project Proposal
General Conditions (1/1/18)

The proposal is accepted, and you are authorized to proceed.

Authorizer's Firm

Authorizer's Signature

Authorizer's Name (please print or type)

Authorizer's Title

Date

BRAUN
INTERTEC

BRAUN INTERTEC

The Science You Build On.

Project Proposal

QTB153082

Radisson Parking Ramp

Client:

Walker Parking Consultants/Engineers Inc.
Scott Froemming
1660 S Highway 100 Ste 545
Minneapolis, MN 55416
(952) 595-9616

Work Site Address:

502 NP Avenue
Fargo, ND 58107

Service Description:

Geotechnical Evaluation

	Description	Quantity	Units	Unit Price	Extension
Phase 1	Geotechnical Consulting				
Activity 1.1	Overstressed Foundation Evaluation				\$4,500.00
128	Senior Engineer	15.00	Hour	213.00	\$3,195.00
130	Principal Engineer	4.00	Hour	255.00	\$1,020.00
1871	GEO Trip Charge	1.00	Each	25.00	\$25.00
138	Project Assistant	1.00	Hour	107.00	\$107.00
125	Project Control Specialist	1.00	Hour	153.00	\$153.00
Phase 1 Total:					\$4,500.00

Proposal Total:	\$4,500.00
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General Conditions

Section 1: Agreement

1.1 Our agreement with you consists of these General Conditions and the accompanying written proposal or authorization ("Agreement"). This Agreement is the entire agreement between you and us. It supersedes prior agreements. It may be modified only in a writing signed by us, making specific reference to the provision modified.

1.2 The words "you," "we," "us," and "our" include officers, employees, and subcontractors.

1.3 In the event you use a purchase order or other documentation to authorize our scope of work ("Services"), any conflicting or additional terms are not part of this Agreement. Directing us to start work prior to execution of this Agreement constitutes your acceptance. If, however, mutually acceptable terms cannot be established, we have the right to terminate this Agreement without liability to you or others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

Section 2: Our Responsibilities

2.1 We will provide Services specifically described in this Agreement. You agree that we are not responsible for services that are not expressly included in this Agreement. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

2.2 In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction. If during the one year period following completion of Services it is determined that the above standards have not been met and you have promptly notified us in writing of such failure, we will perform, at our cost, such corrective services as may be necessary, within the original scope in this Agreement, to remedy such deficiency. Remedies set forth in this section constitute your sole and exclusive recourse with respect to the performance or quality of Services.

2.3 We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and further that site conditions may vary over distance or change over time.

2.4 Our duties do not include supervising or directing your representatives or contractors or commenting on, overseeing, or providing the means and methods of their services unless expressly set forth in this Agreement. We will not be responsible for the failure of your contractors, and the providing of Services will not relieve others of their responsibilities to you or to others.

2.5 We will provide a health and safety program for our employees, but we will not be responsible for contractor, owner, project, or site health or safety.

2.6 You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our employees are authorized by you to refuse to work under conditions that may be unsafe.

2.7 Unless a fixed fee is indicated, our price is an estimate of our project costs and expenses based on information available to us and our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

Section 3: Your Responsibilities

3.1 You will provide us with prior environmental, geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed Services.

3.2 You will provide access to the site. In the performance of Services some site damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site. We have not included the cost of restoration of damage in the estimated charges.

3.3 You agree to provide us, in a timely manner, with information that you have regarding buried objects at the site. We will not be responsible for locating buried objects at the site. *You agree to hold us harmless, defend, and indemnify us from claims, damages, losses, penalties and expenses (including attorney fees) involving buried objects that were not properly marked or identified or of which you had knowledge but did not timely call to our attention or correctly show on the plans you or others furnished to us.*

3.4 You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials present on any work site or in a sample provided to us. You agree to provide us with information in your possession or control relating to such materials or samples. If we observe or suspect the presence of contaminants not anticipated in this Agreement, we may terminate Services without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

3.5 Neither this Agreement nor the providing of Services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous substances. *You agree to hold us harmless, defend, and indemnify us from any damages, claims, damages, penalties or losses resulting from the storage, removal, hauling or disposal of such substances.*

3.6 Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless expressly set forth otherwise in this Agreement.

3.7 You agree to make all disclosures required by law. In the event you do not own the project site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site. *You agree to hold us harmless, defend, and indemnify us from claims, damages, penalties, or losses and expenses, including attorney fees, related to failures to make disclosures, disclosures made by us that are required by law, and from claims related to the informing or failure to inform the site owner of the discovery of contaminants.*

Section 4: Reports and Records

4.1 Unless you request otherwise, we will provide our report in an electronic format.

4.2 Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property. We hereby grant you a license to use the reports and related information we provide only for the related project and for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. *You agree to indemnify, defend, and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use.*

4.3 If you do not pay for Services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

4.4 Samples and field data remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleansed of contaminants are and continue to be your property. They may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

4.5 Electronic data, reports, photographs, samples, and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

Section 5: Compensation

5.1 You will pay for Services as stated in this Agreement. If such payment references our Schedule of Charges, the invoicing will be based upon the most current schedule. An estimated amount is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

5.2 You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices upon receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

5.3 If you direct us to invoice a third party, we may do so, but you agree to be responsible for our compensation unless the third party is creditworthy (in our sole opinion) and provides written acceptance of all terms of this Agreement.

5.4 Your obligation to pay for Services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of any lawsuit, your successful completion of any project, receipt of payment from a third party, or any other event. No retainage will be withheld.

5.5 If you do not pay us in accordance with this Agreement, you agree to reimburse all costs and expenses for collection of the moneys invoiced, including but not limited to attorney fees and staff time.

5.6 You agree to compensate us in accordance with our Schedule of Charges if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

5.7 If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work changes, or if changed labor conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice, the schedule will be extended for each day of delay, and we will be compensated for costs and expenses incurred in accordance with our Schedule of Charges.

5.8 If you fail to pay us in accordance with this Agreement, we may consider the default a total breach of this Agreement and, at our option, terminate our duties without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

5.9 In consideration of our providing insurance to cover claims made by you, you hereby waive any right to offset fees otherwise due us.

Section 6: Disputes, Damage, and Risk Allocation

6.1 Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s)

attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

6.2 *Notwithstanding anything to the contrary in this Agreement, neither party hereto shall be responsible or held liable to the other for punitive, indirect, incidental, or consequential damages, or liability for loss of use, loss of business opportunity, loss of profit or revenue, loss of product or output, or business interruption.*

6.3 You and we agree that any action in relation to an alleged breach of our standard of care or this Agreement shall be commenced within one year of the date of the breach or of the date of substantial completion of Services, whichever is earlier, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute. We will not be liable unless you have notified us within 30 days of the date of such breach and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us with a written certificate executed by an appropriately licensed professional specifying and certifying each and every act or omission that you contend constitutes a violation of the standard of care governing our professional services. Should you fail to meet the conditions above, you agree to fully release us from any liability for such allegation.

6.4 *For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the fee paid for Services or \$50,000, whichever is greater. If you are unwilling to accept this allocation of risk, we will increase our aggregate liability to \$100,000 provided that, within 10 days of the date of this Agreement, you provide payment in an amount that will increase our fees by 10%, but not less than \$500, to compensate us for the greater risk undertaken.* This increased fee is not the purchase of insurance.

6.5 *You agree to indemnify us from all liability to others in excess of the risk allocation stated herein and to insure this obligation. In addition, all indemnities and limitations of liability set forth in this Agreement apply however the same may arise, whether in contract, tort, statute, equity or other theory of law, including, but not limited to, the breach of any legal duty or the fault, negligence, or strict liability of either party.*

6.6 This Agreement shall be governed, construed, and enforced in accordance with the laws of the state in which our servicing office is located, without regard to its conflict of laws rules. The laws of the state of our servicing office will govern all disputes, and all claims shall be heard in the state or federal courts for that state. Each of us waives trial by jury.

6.7 No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make a claim against individual officers or employees.

Section 7: General Indemnification

7.1 *We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold us harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.*

7.2 To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

7.3 You agree to indemnify us against losses and costs arising out of claims of patent or copyright infringement as to any process or system that is specified or selected by you or by others on your behalf.

Section 8: Miscellaneous Provisions

8.1 We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured shall be limited to losses caused by our negligence.

8.2 You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

8.3 Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

8.4 This Agreement may be terminated early only in writing. You will compensate us for fees earned for performance completed and expenses incurred up to the time of termination.

8.5 If any provision of this Agreement is held invalid or unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

8.6 No waiver of any right or privilege of either party will occur upon such party's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach.



Braun Intertec Corporation
526 10th Street NE, Suite 300
P.O. Box 485
West Fargo, ND 58078

Phone: 701.232.8701
Fax: 701.232.7817
Web: braunintertec.com

February 10, 2022

Proposal QTB153463

Scott Froemming
Walker Parking Consultant/Engineering Inc.
1660 S Highway 100 Ste 545
Minneapolis, MN 55416

Re: Proposal for Special Inspection and Testing Services
Radisson Parking Ramp
502 NP Avenue
Fargo, ND 58107

Dear Mr. Froemming:

Braun Intertec Corporation is pleased to submit this proposal to provide special inspections and testing services for Radisson Parking Ramp in Fargo, ND.

Since our inception in 1957, we have grown into one of the largest employee-owned engineering firms in the nation. With around 1,000 employee owners, retaining our firm gives you access to a diverse range of services and professionals you can consult with if the unforeseen occurs. The size of our company also allows us to respond quickly when schedule constraints occur.

Our Understanding of Project

We understand this project will include the construction of an additional level to the existing parking ramp. Construction will include extending existing concrete columns, modifying concrete beams, a roughly 30,000 square foot post-tensioned concrete deck, and masonry and steel for the stairwells.

Available Information

This proposal was prepared using the following documents and information.

- Discussions with Mr. Froemming regarding anticipated scope of work and estimated concrete placements and inspections.

Project Approach and Staff Qualifications

Special Inspections

Braun Intertec has adopted the International Code Council (ICC) Model Program for Special Inspection to develop the guiding principles for our special inspection program. This model was selected because it was designed by the ICC to assist owners, contractors and building officials in the understanding, administration, and enforcement of the special inspection requirements of the International Building

Code (IBC). Currently, there are ICC certifications for soils, reinforced concrete, structural masonry, pre-tension/post-tension (pre-stressed) concrete, spray-applied fireproofing, structural steel and bolting, and structural welding.

Qualifications and Experience

An ICC certified special inspector is one who has successfully demonstrated their ability to understand the IBC, construction practices and how to read and understand construction documents. Through experience and examination, our ICC certified special inspectors have demonstrated their ability to provide special inspection services.

Inspections and Reporting

Our special inspectors summarize the nature, extent, and results of special inspection activities at the time they are performed on Special Inspection Daily Report forms submitted electronically to the general contractor's on-site personnel for review and records. These records can also be transmitted electronically to others who may want to review these documents on an agreed upon schedule. When unresolved discrepancies are noted, we will document the issues and work with the design and construction team to bring them to resolution. Special inspection final reports will be prepared and submitted upon completion as required by the requirements of the IBC.

Communications

Braun Intertec special inspectors will communicate the results of their inspections to the contractor and our supervising engineer each day special inspections are performed. We strive to have our special inspectors develop a working relationship with the project's structural engineer-of-record. We may attempt contact with the structural engineering consultant periodically to review the work being performed and to request clarifications and direction on any item that may require it.

Construction Materials Testing

Qualified technicians working under the direction of a professional engineer will provide the services. Experience and certification information is available upon request once we are provided with schedule information. Concrete technicians assigned to the project are ACI Concrete Field-Testing Technician – Grade I certified to conduct the required concrete testing. Soil technicians are certified to use a nuclear gauge for soil density testing, so test results can be determined on site and evaluated once the required laboratory testing is completed. Field test results will be verbally reported daily to the general contractor on site, with written field and laboratory reports distributed shortly after.

Scope of Services

Services are performed under the direction of a registered professional engineer, either on a full-time or periodic basis, depending on the construction schedule and when they are requested by the general contractor. After reviewing available information, we understand our scope of services for the project will be limited to the tasks defined below.

Concrete Related Services

- Observe concrete reinforcement placement.

- Observe post-tension tendon and mild reinforcement placement.
- Measure and document the post-tension tendon elongation and total load applied for review by the structural engineer-of-record.
- Observe the general placement of bolts and other embeds in the plastic concrete.
- Sample and test the plastic concrete for slump, air content, temperature and prepare test cylinders for laboratory compressive strength testing with ACI level 1 field technicians. We will perform concrete testing on structural items as required by the IBC.
- Observe the concrete placement and test sample preparation.
- Perform laboratory compressive strength testing of the concrete samples.
- Observe the installation of post-installed anchors on a periodic basis.

Structural Masonry Related Services

- Observe the structural masonry construction and grouting operation on a periodic basis.
- Observe the preparation of grout and masonry block prism samples.
- Perform structural masonry grout and structural masonry prism testing.

Structural Steel Related Services

- Observe and test the structural steel welded and bolted connections in the field.
- Observe and test the metal decking connections for orientation, and sidelap fasteners.
- Observe and test the precast concrete welded or bolted connections.

Engineering Consulting and Project Communication and Reporting Services

- Provide engineering consulting services, review test results and observations reports, and prepare required final reports.
- Management, including scheduling of our field personnel and communication with the contractor, owner, building official, and design team.
- Transmit results to the project team on weekly basis to the contractor, owner, building official, fabricators and design team.

Basis of Scope of Work

The costs associated with the proposed scope of services were estimated using the following assumptions. If the construction schedule is modified or the contractor completes the various phases of the project at different frequencies or durations than shown in this proposal, we may need to adjust the overall cost accordingly. The scope of work and number of trips required to perform these services are as shown in the attached table. Notable assumptions in developing our estimate include:

- Assumptions regarding the number of trips for special inspections and testing are outlined in the attached cost estimate table. As the contractor's schedule becomes available and designs are finalized, please review this proposed scope of work to determine if the project's needs and budget will be met.
- The post-tensioning of the decks will be completed at 6 hours each. Two jacks will be used to stress the slabs.
- Concrete placements for the structure will be observed throughout the duration by our technician as required by the IBC and project documents.
- The inspection of the reinforcement associated with structural concrete will be performed immediately prior to testing of the concrete with no additional trips or time incurred.
- The masonry construction will require inspections to be completed every time grout is placed. Grout will be placed with high lift grout techniques.
- We assume the structural steel fabricator will be AISC certified, and review of quality control manual or inspections of the fabrication shop are **not** required. If this assumption is not correct, please call us and we will provide a cost estimate for the fabrication shop inspections.
- No special site-specific training or gear is required to complete our scope of services.
- Parking will be available on site for our vehicles.
- You, or others you may designate, will provide us with current and approved plans and specifications for the project. Modification to these plans must also be sent to us so we can review their incorporation into the work.
- We will require a minimum of 24 hours' notice for scheduling inspections for a specific time. Shorter than 24 hours' notice may impact our ability to perform the requested services, and the associated impacts will be the responsibility of others.

Cost

We will furnish the services described in this proposal for an estimated fee of \$22,502. A tabulation showing hourly and unit rates associated with our proposed scope of services is attached. The actual cost of our services will be based on the actual units or hours expended to meet the requirements of the project documents.

This cost estimate was developed with the understanding that the scope of services defined herein will be required and requested during our normal work hours of 6:00 a.m. to 4:00 p.m., Monday through Friday. Services that we are asked to provide to meet the project requirements or the contractor's construction schedule **outside** our normal business hours will be invoiced using an overtime rate factor. The factor for services provided outside our normal work hours or on Saturday will be 1.25 times the listed hourly rate for the service provided. The factor for services provided on Sunday or legal holidays will be 1.5 times the listed hourly rate for the service provided. We have not included premiums for overtime in our cost estimate; however, we recommend that allowances and contingencies be made for overtime charges based on conversations with the contractor. You will be billed only for services provided on a time and materials basis.

Because our services are directly controlled by the schedule and performance of others, the actual cost may vary from our estimate. It is difficult to project all of the services and the quantity of services that may be required for any project. If services are required that are not discussed above, we will provide them at the rates shown in the attached table or, if not shown, at our current Schedule of Charges. We will invoice you on a monthly basis.

General Remarks

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. After reviewing this proposal, **please sign and return one copy to our office as notification of acceptance and authorization to proceed.** If anything in this proposal is not consistent with your requirements, please let us know immediately. Braun Intertec will not release any written reports until we have received a signed agreement. Also, ordering services from Braun Intertec constitutes acceptance of the terms of this proposal (including the attached General Conditions).

The proposed fee is based on the scope of services described and the assumption that our services will be authorized within 30 days and that others will not delay us beyond our proposed schedule.

Radisson Parking Ramp
Proposal QTB153463
February 10, 2022
Page 6

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact Adam Nistler at 701.367.0538 (anistler@braunintertec.com) or Ezra Ballinger at 701.232.8701 (eballinger@braunintertec.com).

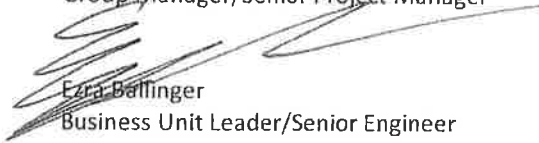
Sincerely,

BRAUN INTERTEC CORPORATION



Adam Nistler

Group Manager/Senior Project Manager



Ezra Ballinger

Business Unit Leader/Senior Engineer

Attachments:

Cost Estimate Table

General Conditions – CMT (1/1/18)

The proposal is accepted. We will reimburse you in accordance with this agreement, and you are authorized to proceed:

Authorizer's Firm

Authorizer's Signature

Authorizer's Name (please print or type)

Authorizer's Title

Date

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The Science You Build On.

Project Proposal

QTB153463

Radisson Parking Ramp

Client:

Walker Parking Consultants/Engineers Inc.
Scott Froemming
1660 S Highway 100 Ste 545
Minneapolis, MN 55416
(952) 595-9616

Work Site Address:

502 NP Avenue
Fargo, ND 58102

Service Description:

Special Inspections and Construction
Materials Testing

	Description	Quantity	Units	Unit Price	Extension
Phase 1					
Concrete					
Activity 1.1	Concrete Observations and Testing				\$14,030.00
260	Concrete Observations	112.00	Hour	95.00	\$10,640.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	PT Tendons & Rebar (Before Pour)	4.00	Trips	10.00	40.00
	PT Concrete Deck +Pour (During Pour)	4.00	Trips	8.00	32.00
	PT Stressing (Post Pour)	4.00	Trips	6.00	24.00
	Columns	4.00	Trips	2.00	8.00
	Drilled Epoxy Anchors	2.00	Trips	4.00	8.00
261	Concrete Testing	30.00	Hour	85.00	\$2,550.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	PT Concrete Deck	4.00	Trips	3.00	12.00
	Columns	4.00	Trips	3.00	12.00
	Beams	2.00	Trips	3.00	6.00
278	Concrete Cylinder Pick up	4.00	Hour	85.00	\$340.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Cylinder Pickup	8.00	Trips	0.50	4.00
1861	CMT Trip Charge	20.00	Each	25.00	\$500.00
Activity 1.2	Concrete Lab Tests				\$1,920.00
1364	Compressive strength of concrete cylinders (ASTM C 39), each	64.00	Each	30.00	\$1,920.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	PT Concrete Deck	8.00	Set	5.00	40.00
	Columns	4.00	Set	4.00	16.00
	Beams	2.00	Set	4.00	8.00
Phase 1 Total:					\$15,950.00
Phase 2					
Masonry					
Activity 2.1	Masonry Observations				\$1,525.00
203	Masonry Observations	15.00	Hour	95.00	\$1,425.00
1861	CMT Trip Charge	4.00	Each	25.00	\$100.00
Activity 2.2	Masonry Lab Tests				\$1,677.00
1409	Compressive strength - Hollow block prisms (ASTM C 1314), per specimen	3.00	Each	175.00	\$525.00
1412	Compressive strength of grout (ASTM C 1019), per specimen	12.00	Each	80.00	\$960.00
1407	Net area determination (ASTM C 140) , per specimen	3.00	Each	64.00	\$192.00
Phase 2 Total:					\$3,202.00
Phase 3					
Structural Steel					
Activity 3.1	Structural Steel Observations				\$740.00
605	ICC Structural Steel Technician	6.00	Hour	115.00	\$690.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Welding/Bolting	2.00	Trips	3.00	6.00



The Science You Build On.

Project Proposal

QTB153463

Radisson Parking Ramp

1861	CMT Trip Charge	2.00	Each	25.00	\$50.00
Phase 3 Total:					\$740.00
Phase 4					
Project Management, Engineering Review, and Oversight					
Activity 4.1	Project Management, Engineering Review, and Oversight				\$2,610.00
238	Project Assistant	6.00	Hour	85.00	\$510.00
226	Project Manager	12.00	Hour	175.00	\$2,100.00
Phase 4 Total:					\$2,610.00
Proposal Total:					\$22,502.00

General Conditions**Construction Material Testing and Special Inspections****Section 1: Agreement**

1.1 Our agreement with you consists of these General Conditions and the accompanying written proposal or authorization ("Agreement"). This Agreement is the entire agreement between you and us. It supersedes prior agreements. It may be modified only in a writing signed by us, making specific reference to the provision modified.

1.2 The words "you," "we," "us," and "our" include officers, employees, and subcontractors.

1.3 In the event you use a purchase order or other documentation to authorize our scope of work ("Services"), any conflicting or additional terms are not part of this Agreement. Directing us to start work prior to execution of this Agreement constitutes your acceptance. If, however, mutually acceptable terms cannot be established, we have the right to terminate this Agreement without liability to you or others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

Section 2: Our Responsibilities

2.1 We will provide Services specifically described in this Agreement. You agree that we are not responsible for services that are not expressly included in this Agreement. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

2.2 In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction. If during the one year period following completion of Services it is determined that the above standards have not been met and you have promptly notified us in writing of such failure, we will perform, at our cost, such corrective services as may be necessary, within the original scope in this Agreement, to remedy such deficiency. Remedies set forth in this section constitute your sole and exclusive recourse with respect to the performance or quality of Services.

2.3 We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and

further that site conditions may vary over distance or change over time.

2.4 Our duties do not include supervising or directing your representatives or contractors or commenting on, overseeing, or providing the means and methods of their services unless expressly set forth in this Agreement. We will not be responsible for the failure of your contractors, and the providing of Services will not relieve others of their responsibilities to you or to others.

2.5 We will provide a health and safety program for our employees, but we will not be responsible for contractor, owner, project, or site health or safety.

2.6 You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our employees are authorized by you to refuse to work under conditions that may be unsafe.

2.7 Unless a fixed fee is indicated, our price is an estimate of our project costs and expenses based on information available to us and our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

Section 3: Your Responsibilities

3.1 You will provide us with prior environmental, geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed Services.

3.2 You will provide access to the site. In the performance of Services some site damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site. We have not included the cost of restoration of damage in the estimated charges.

3.3 If we notify you that radiographic or gamma ray equipment or other nuclear testing or measuring device will be used, you will be responsible for the cooperation of your employees and your contractors in observing all radiation safety standards.

3.4 You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials present on any work site. If we observe or suspect the presence of contaminants not anticipated in this Agreement, we may terminate Services without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

3.5 The time our field personnel spend on the job site depends upon the scheduling of the work we are observing or testing. You agree that any changes in scheduling may result in additional

costs and agree to pay for those services at the rates listed in our cost estimate.

3.6 You agree to include us as an indemnified party in your contracts, if any, for work by others on the project, protecting us to the same degree as you are protected. You agree to list us as an Additional Insured under your liability insurance policies and to require subrogation be waived against us and that we will be added as an Additional Insured on all policies of insurance, including any policies required of your contractors or subcontractors, covering any construction or development activities to be performed on the project site.

Section 4: Reports and Records

4.1 Unless you request otherwise, we will provide our report(s) in an electronic format.

4.2 Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property. We hereby grant you a license to use the reports and related information we provide only for the related project and for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. *You agree to indemnify, defend, and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use.*

4.3 If you do not pay for Services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

4.4 Electronic data, reports, photographs, samples, and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

Section 5: Compensation

5.1 You will pay for Services as stated in this Agreement. If such payment references our Schedule of Charges, the invoicing will be based upon the most current schedule. An estimated amount is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

5.2 You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices upon receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

5.3 If you direct us to invoice a third party, we may do so, but you agree to be responsible for our compensation unless the third party is

creditworthy (in our sole opinion) and provides written acceptance of all terms of this Agreement.

5.4 Your obligation to pay for Services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of any lawsuit, your successful completion of any project, receipt of payment from a third party, or any other event. No retainage will be withheld.

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6.1 Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

6.2 *Notwithstanding anything to the contrary in this Agreement, neither party hereto shall be responsible or held liable to the other for punitive, indirect, incidental, or consequential damages, or liability for loss of use, loss of*

business opportunity, loss of profit or revenue, loss of product or output, or business interruption.

6.3 You and we agree that any action in relation to an alleged breach of our standard of care or this Agreement shall be commenced within one year of the date of the breach or of the date of substantial completion of Services, whichever is earlier, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute. We will not be liable unless you have notified us within 30 days of the date of such breach and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us with a written certificate executed by an appropriately licensed professional specifying and certifying each and every act or omission that you contend constitutes a violation of the standard of care governing our professional services. Should you fail to meet the conditions above, you agree to fully release us from any liability for such allegation.

6.4 *For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the fee paid for Services or \$50,000, whichever is greater. If you are unwilling to accept this allocation of risk, we will increase our aggregate liability to \$100,000 provided that, within 10 days of the date of this Agreement, you provide payment in an amount that will increase our fees by 10%, but not less than \$500, to compensate us for the greater risk undertaken. This increased fee is not the purchase of insurance.*

6.5 *You agree to indemnify us from all liability to others in excess of the risk allocation stated herein and to insure this obligation. In addition, all indemnities and limitations of liability set forth in this Agreement apply however the same may arise, whether in contract, tort, statute, equity or other theory of law, including, but not limited to, the breach of any legal duty or the fault, negligence, or strict liability of either party.*

6.6 This Agreement shall be governed, construed, and enforced in accordance with the laws of the state in which our servicing office is located, without regard to its conflict of laws rules. The laws of the state of our servicing office will govern all disputes, and all claims shall be heard in the state or federal courts for that state. Each of us waives trial by jury.

6.7 No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make a claim against individual officers or employees.

Section 7: General Indemnification

7.1 *We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold us harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.*

7.2 To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

Section 8: Miscellaneous Provisions

8.1 We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured shall be limited to losses caused by our negligence.

8.2 You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

8.3 Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

8.4 This Agreement may be terminated early only in writing. You will compensate us for fees earned for performance completed and expenses incurred up to the time of termination.

8.5 If any provision of this Agreement is held invalid or unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

8.6 No waiver of any right or privilege of either party will occur upon such party's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach.

CITY OF FARGO POLICE DEPARTMENT



Chief David B. Zibolski

105 25th Street North, Fargo, North Dakota 58102
Office: 701-241-1400 Fax: 701-297-7789
www.fargopolice.com

March 2, 2022

(18)

Fargo City Commission
City Hall
225 4th Street N.
Fargo, ND 58102

RE: Approval of Asset Forfeiture funds to purchase a police K-9 and provide training

Dear Commissioners,

In early 2021, the Department retired one of our four approved police K-9's. Subsequent to that, the Department conducted a new process to select a new K-9 handler and contracted with our established K-9 training facility. In order to alleviate an additional budget request, it was determined that existing asset forfeiture funds would be utilized for the replacement K-9. The new K-9 will have the same capabilities in terms of drug detection and tracking as the retired dog. The total cost of the dog and training for the handler is \$22,612.00. The breakdown of those costs and contract is included and has been reviewed by City Attorney Nancy Morris.

Recommended Motion:

Approve the use of civil asset forfeiture funds by the Fargo Police Department to purchase a police K-9 and provide handler training.

Please feel free to contact with me any questions or concerns you may have relative to this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "David B. Zibolski".
David B. Zibolski
Chief of Police



Fargo Police Department

Memo

To: Chief David Zibolski

From: Captain Chris Helmick *CH*

Date: February 25, 2022

RE: Request to Use Asset Forfeiture Funds for K9 and Handler Training

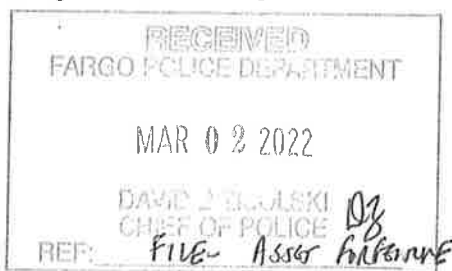
Attached is a memo from Lt. Bill Ahlfeldt concerning the purchase of K9 Thor and the initial training costs for both Thor and Officer Elliott Olerud. We are requesting to use \$22,612 from the department's state asset forfeiture funds to complete the purchase of Thor; for all initial training costs; and for lodging and per diem for Officer Olerud while away at training.

A breakdown of the costs is as follows:

K9 purchase price:	\$10,000
12 weeks training in Minnesota:	4,500
12 week lodging:	4,272
12 week per diem (64.00/day)	<u>3,840</u>
	<u>\$22,612</u>

In addition, the attached invoice and warranty will need your signature to complete the purchase. City Attorney Nancy Morris has reviewed these documents, and she expressed concern about item #5 about indemnity. Specifically, she did not feel the city could agree to unlimited indemnity. However, the seller was not willing to alter the contract, and this clause is common in K9 purchase agreements. After talking to Ms. Morris further, we both feel that the risk is very low, and we could move forward with signing the purchase agreement.

I have attached the completed Application for Appropriation from Civil Asset Forfeiture Fund form, along the Purchasing Quote form and associated memos.



cc: BSW for 3/1 Commission

Application for Appropriation from Civil Asset Forfeiture Fund

Applicant

David Zibolski, Chief of Police
Fargo Police Department, 105 25th St. N., Fargo ND, 58102
dzibolski@fargond.gov
701-476-4001

Appropriation Requested:

\$22,612 to pay for K9 Thor along with training, lodging and per diem costs.

Explanation and confirmation of how the requested appropriation will further the public purpose of reducing criminal activity and aiding the efforts of criminal justice in support and furtherance of the Fargo Police Department's mission:

The Fargo Police Department uses canines for narcotics investigations; for tracking suspects and missing people; and for apprehending dangerous individuals. The department purchased a fourth canine to improve our capabilities to respond to these types of incidents. Both the canine and the assigned handler need specialized training to be effective, and the training will take place over 12 weeks in Minnesota, which will require lodging and per diem for our officer.

I, Chief David Zibolski, am in support of the above-stated request for appropriation from the Civil Asset Forfeiture Fund. City of Fargo procurement policies will be followed to for all expenditures. Written confirmation will be provided to the City of Fargo Finance Office when the funds are expended.



David Zibolski, Chief of Police

03-02-22
Date



Purchasing Quote Form

This form is required for every purchase between \$10,001 and \$50,000 per item. It applies to purchases made by credit card and/or by purchase order.

Purchase Date: 2/25/2022 Requisition No. or Pcard No. (last 4 digits only): _____

Purchaser Name or Purchasing Card Name: _____

What is being purchased?

K9 Thor and initial handler training

Is this an Emergency Purchase No (Yes/ No) If yes, no quotes are needed. Please indicate the Total Purchase Price, describe the urgent situation in the comment section and have the Department Head sign the signature line below.

Vendor #1 Name and Quote: Shallow Creek - \$18,020

Vendor #2 Name and Quote: Code Blue K9 - \$20,300

Vendor #3 Name and Quote: Performance Kennels - \$26,600

Vendor Selected: Code Blue K9

Quantity Purchased: 1 Total Purchase Price \$: \$20,300

If equipment over \$10,000 per unit was purchased, please complete the Fixed Asset Addition Form.

Comments:

Department Head Signature (for Emergency Purchase) _____

Auditors Office:

Documentation complete _____ (Yes/ No) Verified by _____ Date: _____



Fargo Police Department

Memo

To: Chief David Zibolski

From: Lt. William S. Ahlfeldt

A handwritten signature in dark ink, appearing to be "W. Ahlfeldt", is written over the "From:" line.

Date: October 19, 2021

RE: New K-9 Handler Training

Currently the Fargo Police Department K-9 group is conducting a process for two new K-9 handlers. New handlers will be selected by the end of October 2021. One to replace Officer Jennifer Gustafson with K-9 Toby, and one to fill an open K-9 position. The officer that will replace Officer Gustafson will be required to attend a six week school at Shallow Creek Kennels in Sharpsville, PA. This is the kennel where K-9 Toby was purchased and trained along with Officer Gustafson. The approximate cost of the training to reintegrate a new K-9 handler with K-9 Toby will be approximately \$9,600.00. That cost includes the class price, Per Diem, and Hotel. The six week class will start December 20, 2021 and run through January 28, 2022. Shallow Creek Kennels has reserved our department a spot in the class and all other arrangements have been made for the newly selected handler to attend.

The K-9 group has multiple options for purchasing our new K-9 and completing handler training. The majority of our K-9's have come from Shallow Creek. The majority of our K-9 officers have been trained at Shallow Creek. They train the purchased dog prior to the new handler's arrival, and then train the new handler to work with the already trained dog. Their first available class will be March 21, 2022-April 29, 2022. The cost for the dog, class, per diem, and board will be \$18,020.

Another option would be a company in South Eastern Minnesota which we have never tried but is highly recommended called Code Blue K-9. They have a 12 week train up time which starts the first week in March 2022 and ends the last week in May 2022. Their price of \$20,300 would provide a dual purpose patrol dog (patrol/narcotics) which would be trained along with the newly selected K-9 officer. The benefit to this type of training is that the newly selected officer works through all of the training issues with

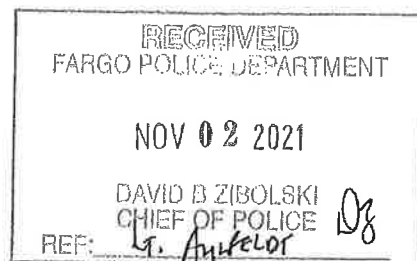
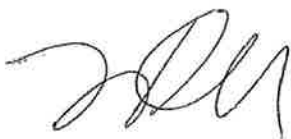
their new dog making them more familiar with the dog and teaching the officer how to be a more competent handler.

The benefit in going with a new kennel is in bringing a new K-9 bloodline into the group along with bringing in new training techniques.

There is a third bid that we received from another Minnesota kennel called Performance Kennels. Their bid came in at \$26,600.

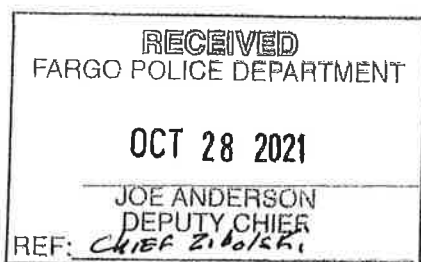
It is my request, considering the new benefits our department will receive from it, to spend the extra money on Code Blue K-9 for the newly selected K-9 and handler training. If not, we will continue with Shallow Creek Kennels.

Lt. William S. Ahlfeldt

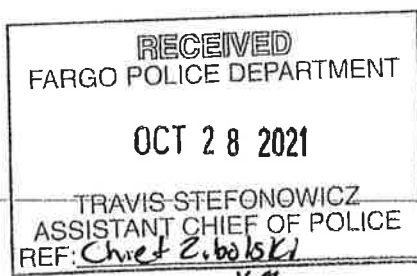


* APPROVED VIA ASSET FORFEITURE 2022

CC: FILE K-9
A/C STEFONOWICZ



Concur - Code Blue K-9
reference letter attached



Concur - Code Blue K-9

CITY OF FARGO POLICE DEPARTMENT



Chief David B. Zibolski

105 25th Street North, Fargo, North Dakota 58102

Office: 701-241-1400 Fax: 701-297-7789

www.fargopolice.com

March 2, 2022

Fargo City Commission
City Hall
225 4th Street N.
Fargo, ND 58102

19

RE: Approval of the US Marshal Service Memorandum of Understanding and the Drug Enforcement Memorandum of Understanding pertaining to Body Worn Cameras

Dear Commissioners,

The Fargo Police Department has an existing Memorandum of Understanding (MOU) with the United States Marshal's Service that enables designated members of the Criminal Investigations Division to be federally deputized in order to assist with the apprehension of wanted, violent fugitives in our city and region. Likewise, the Department has an existing MOU with the United States Department of Justice Drug Enforcement Administration (DEA), in which we have an assigned taskforce officer (TFO) working directly with DEA that also serves as a conduit with the Cass County Drug Taskforce. Both of these relationships are extremely beneficial to the Department and to our community.

With the addition of body worn cameras to our department, it was necessary to amend both Memorandums of Understanding to allow for the use of the body worn cameras by our members when serving in either taskforce role. The language for both MOUs was reviewed by City Attorney Nancy Morris, and is in compliance with Fargo Police Department Policy 424 (Portable Audio/Video Recorders), Section 424.5.1 (Members assigned to a Federal or State Taskforce).

Recommended Motion:

Approve the Memorandums of Understanding between the Fargo Police Department and the United States Marshal's Service (USMS), and the Drug Enforcement Administration (DEA).

Please feel free to contact with me any questions or concerns you may have relative to this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "David B. Zibolski".
David B. Zibolski
Chief of Police

Addendum to Fugitive Task Force Memorandum of Understanding
RE: Body-Worn Camera Use by Task Force Officers

This Addendum supplements the current Memorandum of Understanding (MOU) between the United States Marshals Service (USMS) and the

Fargo Police Department

(Hereinafter referred to as "Partner Agency" or "TFO parent agency")

Pursuant to the "U.S. Department of Justice Policy – Use of Body-Worn Cameras by Federally Deputized Task Force Officers," dated October 29, 2020 (hereinafter referred to as "DOJ Policy"), the above named Partner Agency has advised the USMS that it will require its Specially Deputized Task Force Officers (TFO) assigned to the USMS Task Force to use body-worn cameras (BWCs). This Addendum governs that use.

The parties hereby agree to the following:

- I. The Partner Agency and their TFOs will be advised of and adhere to the DOJ Policy, USMS's Standard Operating Procedures for Body-Worn Camera Program for Task Force Officers, and other applicable federal and USMS policies, procedures, regulations, and laws, including those relating to federal records retention and information access.
- II. The Partner Agency confirms that prior to executing this agreement, it has provided to the USMS details regarding the BWC system and cameras, including the details of any system protections, and any state or local policies or laws applicable to the TFO's use of BWCs, including any retention policies, and training and access procedures.
- III. TFOs will follow the provisions set forth in this agreement for use of BWCs, and the provisions of this agreement will supersede any conflicting provision(s) in the Partner Agency's policy for TFOs while serving on the USMS Task Force.
- IV. Use of BWCs During USMS Task Force Operations:
 - A. TFOs may use **only** Partner Agency-issued and Partner Agency-owned BWCs.
 - B. TFOs will be allowed to wear and activate their BWCs for the purposes of recording their actions during USMS Task Force operations only during:
 1. A planned attempt to serve an arrest warrant or other planned arrest; or,
 2. The execution of a search warrant.

- a. For the execution of a search warrant, BWCs should not be used for searches of property lawfully in government custody or control, or a search to obtain digital or electronic records executed by a third party, such as an electronic service provider or custodian of electronic records.
- C. TFOs are authorized to activate their BWCs upon approaching a subject or premises and must deactivate their BWCs when the scene is secured as determined by the USMS Task Force Supervisor or Team Leader on the scene.
 1. For purposes of this agreement, the term “secured” means the scene is safe and under law enforcement control.
 2. In the event circumstances arise requiring additional law enforcement assistance to secure the scene, the TFO will end BWC recording when relieved from the scene by another law enforcement officer.
- D. TFOs are authorized to wear and activate their recording equipment in accordance with the DOJ Policy anywhere they are authorized to act as a police or peace officer under state, local, territorial or tribal law.
- E. In the event a TFO’s BWC is not working or is inoperable due to a technical problem or cannot be used due to physical damage, the TFO may participate in the operation without using a BWC if that continued participation is consistent with the Partner Agency policy.
- F. Even when BWC use would be permissible in the circumstances set forth in Section IV, subsection B, above, TFOs are prohibited from recording:
 1. Undercover personnel;
 2. Confidential informants or confidential sources;
 3. On-scene witness interviews prior to or after the operation;
 4. Personnel using specialized investigative techniques or equipment; or,
 5. On-scene actions by any non-law enforcement persons who are assisting law enforcement personnel prior to or after the operation.
- G. Even when BWC use would be permissible in the circumstances set forth above in Section IV, subsection B, TFOs are prohibited from activating their BWC if, as determined by the USMS, the TFO is:
 1. Using specialized or sensitive investigative techniques;
 2. Operating as part of a highly specialized or sensitive operation or group;

3. Operating in a sensitive area; or
 4. Working in an undercover or covert status on behalf of the USMS Task Force or the USMS itself.
- H. Even when BWC use would be permissible in the circumstances set forth above in Section IV, subsection B, subject to the discretion of the USMS, TFOs generally shall not use BWCs to record any activities related to investigations involving:
1. Public Corruption;
 2. Medical Facilities;
 3. National Security (including international and domestic terrorism investigations or cases involving classified information); or
 4. Other sensitive investigations as determined by the USMS.
- V. Partner Agency Internal Controls:
- A. For purposes of this agreement, the term “TFO BWC recordings” refers to audio and video recording(s), and associated metadata, from TFO BWCs made while the TFO is working under federal authority, including when executing state and local warrants adopted by the USMS.
 - B. The Partner Agency will provide and maintain central points-of-contact (POC), at a minimum two POCs, a primary and secondary, for the USMS on BWC matters. The Partner Agency will notify the USMS of any change to the POCs.
 - C. The Partner Agency will notify the USMS of any change in state or local law or policy that will modify how TFOs must use BWCs and handle recordings.
 - D. The Partner Agency will notify the USMS prior to making any change in agency policy that will affect the MOU Addendum or the storage, transfer, or redaction of TFO BWC recordings.
 - E. The Partner Agency will provide specifications to USMS personnel on the BWC capabilities and operation.
 - F. If applicable, the Partner Agency will restrict access to any TFO BWC GPS and/or livestream capability as required by the USMS.
- VI. Handling of TFO BWC Recordings Made During USMS Task Force Operations:

- A. All TFO BWC recordings made during USMS Task Force operations in accordance with this agreement, including recordings retained by the Partner Agency and/or in the possession of any third party engaged by the Partner Agency to store or process BWC recordings are federal records of the USMS and the United States Department of Justice pursuant to the Federal Records Act, and shall not be disseminated by the TFO, TFO Partner Agency, or any third party, as described here, without advance written notification to the USMS of their intention to do so as soon as practical. The parties consider this to be a limited waiver of the requirements under Department of Justice regulations regarding records disclosure.
- B. The Partner Agency will provide full, un-redacted, duplicate copies of TFO BWC recordings to the USMS for all activations that record data of USMS Task Force-related operations. The existence of TFO BWC recordings relating to a USMS Task Force operation must be recorded in the USMS authorized record system. Additionally, an unredacted copy of any recording to be released by the TFO Partner Agency shall be provided to the USMS prior to said release.
- C. As a federal record, the Partner Agency will restrict access to TFO BWC recordings within the Partner Agency as provided in the Agency's internal policies. The Partner Agency is authorized to use TFO BWC recordings for internal review of its personnel consistent with the Partner Agency's policies and procedures but may not disseminate the BWC recording outside the Partner Agency or for public release without advance written notification to the USMS.
- D. The Partner Agency will notify the USMS immediately of any unauthorized access to TFO BWC recordings discovered by the Partner Agency. The Partner Agency will cooperate fully with the USMS in the investigation of any unauthorized access to or disclosure of TFO BWC recordings, including providing the USMS with the name(s) of any Partner Agency personnel determined by the Partner Agency to be involved in unauthorized access, copying, or disclosure.
- E. In all circumstances, TFO BWC recordings shall be treated as law enforcement sensitive information. The premature disclosure of these recordings could reasonably be expected to interfere with enforcement proceedings and may be potential evidence in a federal investigation subject to applicable federal laws, rules, and policy concerning disclosure or dissemination and therefore are deemed privileged, absent appropriate redaction prior to disclosure or dissemination. Further, BWC recordings may be entirely exempt from public release or other disclosure or dissemination under applicable federal and state laws, rules, and policy.
- F. If a TFO BWC recording involves a "reportable incident," as defined below, or involves another time-sensitive or urgent situation, the Partner Agency will provide the USMS access to copies on an expedited basis, including during non-business hours.
 - 1. For purposes of this provision, "reportable incident" means:

- a. shooting incident;
 - b. any incident which involves serious bodily injury, death, or where any enforcement action by USMS personnel resulted in the use of force or deadly force;
 - c. physical assault or attempted physical assault on a Law Enforcement Officer; and,
 - d. intentional damage to any facility, conveyance, or other property owned by USMS.
- G. The Partner Agency will provide witnesses, as needed, to authenticate TFO recordings in litigation.
- H. The Partner Agency will inform the USMS of the length of time TFO BWC recordings will be retained by the Partner Agency before deletion.
- I. The Partner Agency will notify the USMS in writing as soon as possible regarding any request or demand for release or disclosure of TFO BWC recordings. In all circumstances, TFO BWC recordings may only be disseminated in accordance with the requirements contained within this MOU addendum.
- J. Expedited Public Release: If TFO BWC recording(s) depict conduct committed solely by a TFO resulting in serious bodily injury or death of another, the TFO's Partner Agency shall notify the USMS as early as possible if it desires to publicly release the recording(s). Following the notification, the TFO's Partner Agency may immediately release the recording(s) with any redactions as appropriate, giving as much advance notice as possible to the USMS as to the time and manner of its release. The USMS will expeditiously review the recording(s) as soon as practical.
- 1. The notification to the USMS shall be made to the local United States Marshal or the Regional Fugitive Task Force (RFTF) Commander which supervises the Task Force on which the TFO serves. Additionally, those personnel will notify the Assistant Director (AD) of the USMS Investigative Operations Division (IOD). The local U.S. Marshal and/or RFTF Commander and AD, IOD will provide further notifications within the USMS as appropriate.
- K. A USMS enforcement action or incident may require additional support from law enforcement officers with the Partner Agency. In the event those assisting law enforcement officers have BWCs, any captured video from those cameras will be made available by the Partner Agency to the USMS upon request.

- VII. The USMS will ensure that all USMS Task Force partner agencies are informed of which other partner agencies, if any, mandate BWC use by their respective TFOs and are authorized to have their TFOs wear BWCs on the USMS Task Force.
- VIII. If the Partner Agency fails to comply with any part of this Addendum, the relationship established under the Task Force Memorandum of Understanding may be immediately terminated.

Digital signatures are preferred

PARTNER AGENCY:

Name: Fargo Police Department Phone: (701) 235-4493

Location (City and State): Fargo, North Dakota

PARTNER AGENCY REPRESENTATIVE:

Print Name and Title: Chief David Zibolski

Signature: _____ Date: _____

OTHER AUTHORIZED SIGNATURE:

Print Name and Title: Dr. Timothy Mahoney

Signature: _____ Date: _____

OTHER AUTHORIZED SIGNATURE:

Print Name and Title: City Auditor Steve Sprague

Signature: _____ Date: _____

ASSISTANT DIRECTOR, INVESTIGATIONS OPERATION DIVISION:

Print Name: _____

Signature: _____ Date: _____

Note: Signed Addendum MUST be submitted to the Investigative Operations Division with other required documentation to obtain authorization for participation in the TFO BWC Program prior to TFOs deploying with BWCs on USMS operations. The executed Addendum should be retained locally with the executed USMS Fugitive Task Force MOU.

Addendum to Task Force Agreements Pertaining to Body-Worn Cameras

This addendum supplements the agreement between the Drug Enforcement Administration (DEA) and the Fargo Police Department, dated October 1, 2021, establishing the Minneapolis/St. Paul District Office Task Force. In addition to the task force named, this Addendum also applies to all deputized officers of Fargo Police Department, including those granted case-specific or emergency deputizations. Pursuant to the "Department of Justice Policy – Use of Body-Worn Cameras by Federally Deputized Task Force Officers," dated October 5, 2021 (DOJ Policy), Fargo Police Department has advised DEA that it will require its deputized officers participating in the Task Force or otherwise deputized by DEA to use Body-Worn Cameras (BWCs). This addendum governs that use.

The parties hereby agree to the following:

- I. Task Force Officers (TFO) will adhere to DOJ Policy, DEA's Interim Body-Worn Camera Program Policy, and other applicable DEA policies and procedures.
- II. Fargo Police Department confirms that prior to executing this agreement it has provided to DEA details regarding the BWC system and cameras, including the details of any system protections, and any state or local policies or laws applicable to the TFO's use of BWCs, including any retention policies.
- III. Use of BWCs During Federal Task Force or Other Federal Operations:
 - A. TFOs will be allowed to wear and activate their recording equipment with BWCs for the purpose of recording their actions only during:
 1. A pre-planned attempt to serve an arrest warrant or other pre-planned arrest; or
 2. The execution of a search or seizure warrant or order.
 - B. TFOs are authorized to activate their BWCs upon approaching a subject or premises, and must deactivate their BWCs when the scene is secured as determined by the federal supervisor as designated by DEA who is on the scene.
 1. For purposes of this agreement, the term "secured" means that the scene is safe and under law enforcement control.
 2. If relieved from the scene prior to it being secured, TFOs will end BWC recording when they leave the scene.
 - C. For the execution of a search warrant, BWCs should not be used for searches of physical property lawfully seized and in government custody or control (e.g., a vehicle, computer, or mobile phone already in DEA custody), or a search warrant to obtain digital or electronic records executed by a third party, such as an electronic service provider or custodian of electronic records.

- D. TFOs will follow the provisions set forth in this agreement for use of BWCs, and the provisions of this agreement will supersede any conflicting provision in the agency's policy for TFOs while serving on the federal Task Force.
- E. TFOs are authorized to wear and activate their BWCs in accordance with this agreement anywhere they are authorized to act as a police or peace officer under state, territorial, or tribal law.
- F. TFOs may possess and use only agency-issued and agency-owned BWCs. TFOs will not be allowed to possess or use any privately owned BWC.
- G. In the event a TFO's BWC is not working or inoperable due to a technical problem or cannot be used due to physical damage, and, in the judgement of the Task Force supervisor, delaying the operation to repair or obtain a replacement BWC is not practical or would impair the operation, the TFO may participate in the operation without using a BWC.
- H. Even when BWC use would be permissible in the circumstances set forth in Section III.A above, TFOs are prohibited from intentionally recording:
 - 1. Undercover personnel;
 - 2. Confidential informants or confidential sources;
 - 3. On-scene witness interviews prior to or after the operation; or
 - 4. Actions by any non-law enforcement persons at the scene who are assisting law enforcement personnel.

IV. Fargo Police Department Internal Controls:

- A. Fargo Chief of Police will serve as a point-of-contact (POC) for DEA on BWC matters.
- B. Fargo Police Department will notify DEA of any change in state or local law that will modify how DEA TFOs must use BWCs or will affect release or redaction of BWC recordings from TFO BWCs made while working under federal authority on behalf of DEA.
- C. Fargo Police Department will notify and consult DEA prior to making any change in agency policy that will affect the storage, release, or redaction of TFO BWC recordings.
- D. Fargo Police Department will provide training to DEA task force personnel on the BWCs to familiarize them with the capabilities and operation of BWCs used during task force activities.
- E. Fargo Police Department will allow DEA Task Force supervisors to make decisions about recording or not recording under the same circumstances that parent agency

supervisors are allowed to make such decisions. Fargo Police Department will provide training to DEA personnel as needed to implement this.

V. Handling of BWC Recordings Made During Federal Task Force or Other Federal Operations:

- A. For purposes of this agreement, the term "TFO BWC recordings" refers to audio and video recordings, and associated metadata, from TFO BWCs made while the TFO is working under federal authority.
- B. Fargo Police Department promptly will provide full, un-redacted copies of TFO BWC recordings to DEA, with no exceptions. The preferred method to receive the recording from the TFO's parent agency is by authorized upload method to DEA's Axon cloud, which is currently available through evidence.com. If Fargo Police Department is unable to provide TFO BWC recordings using this method, or other technical issues arise regarding copies of TFO BWC recordings, DEA and Fargo Police Department, in consultation with DEA's Office of Investigative Technology (ST), will determine an alternative solution.
- C. TFOs will document BWC use and the existence of BWC recordings in the Report Narrative of the DEA Form 6, Report of Investigation and as otherwise required by DEA policy.
- D. The Fargo Police Department will provide the DEA with copies of TFO BWC recordings that qualify as a "duplicate" under Fed. R. Evid. 1001(e).
- E. All TFO BWC recordings made during DEA operations in accordance with this agreement, including such recordings retained by the Fargo Police Department and/or in the possession of any third party engaged by the Fargo Police Department to store or process BWC recordings are federal records of the DEA and DOJ and shall be retained and disseminated in accordance with all applicable federal laws, policies, and procedures including the Federal Records Act, Freedom of Information Act, and/or Privacy Act. BWC recordings cannot be disseminated by the TFO, the TFO's parent agency, or any third party, as described here, without the written permission of DEA.
- F. The TFO's parent agency is authorized to use TFO BWC recordings for internal investigations of its personnel consistent with the parent agency's policies and procedures, but, except as set forth below in Section 5.G, may not disseminate the BWC recording outside the parent agency or for public release without the written permission of the Department. The parent agency shall provide written notification to the sponsoring federal agency prior to any internal review.
- G. Expedited Public Release: DEA will work to expedite the public release of BWC recordings depicting conducting resulting in serious bodily injury or death of another consistent with DOJ policies and subject to any redactions as appropriate. If TFO BWC recording(s) depict conduct committed solely by a Fargo Police Department

TFO resulting in serious bodily injury or death of another, the Fargo Police Department shall notify DEA if it plans to publicly release the recording(s). Following the notification, the Fargo Police Department may immediately release the recording(s) with any redactions as appropriate, giving as much advance notice as possible to DEA as to the time and manner of its release. Following the notification, the Fargo Police Department may release such recording(s), subject to any redactions as appropriate. The notification to DEA shall be made to the Special Agent in Charge of the Omaha Field Division. The Special Agent in Charge will provide further notifications within DEA as appropriate.

- H. In all circumstances, TFO BWC recordings shall be treated as law enforcement sensitive information, the premature disclosure of which could reasonably be expected to interfere with enforcement proceedings, and as potential evidence in a federal investigation subject to applicable federal laws, rules, and policy concerning disclosure or dissemination (including but not limited to 28 C.F.R. Ch. 1, Pt. 16, Subpart B ("Touhy Regulations")); and therefore deemed privileged absent appropriate redaction prior to disclosure or dissemination.
- I. If a TFO BWC recording involves a "reportable incident" as defined below, or involves another time-sensitive or urgent situation, Fargo Police Department will provide DEA copies on an expedited basis, including during non-business hours.
 - 1. For purposes of this provision, "reportable incident" means (1) shooting incident; (2) any incident which involves serious bodily injury or death resulting from any DEA enforcement action by DEA personnel including use of force or deadly force, use of an authorized less-than-lethal (LTL) device, vehicle or foot pursuits, or motor vehicle accidents; (3) any death or serious bodily injury (see below) occurring while in DEA custody or while being taken into custody by a Special Agent (SA) or TFO (including serious bodily injury or death caused by a police canine assigned to a TFO); (4) physical assault; (5) kidnapping or attempted kidnapping of DEA personnel (on- or off-duty), Confidential Sources, or Law Enforcement Officers working on a joint investigation and/or law enforcement operation with DEA; and (6) intentional damage to a DEA facility or DEA conveyance caused by the use of an explosive device, incendiary device, or other vehicle/conveyance.
- J. Fargo Police Department will provide witnesses as needed to authenticate TFO recordings in DEA cases.
- K. Fargo Police Department will inform DEA of the length of time TFO BWC recordings will be retained by the agency before deletion. Fargo Police Department will honor any request by DEA to retain the TFO BWC recordings for a longer period of time.
- L. The Fargo Police Department will restrict access to TFO BWC recordings within the agency.

- M. Fargo Police Department will notify DEA immediately of any unauthorized access to TFO recordings discovered by the agency.
- N. Fargo Police Department will cooperate fully with DEA in the investigation of any unauthorized access to or disclosure of TFO recordings, including providing DEA the name(s) of any agency personnel determined by the agency to be involved in unauthorized access, copying, or disclosure.
- O. Fargo Police Department will notify DEA as soon as possible regarding any request or demand for release or disclosure of TFO recordings, including but not limited to subpoenas, discovery demands or motions, open record/freedom of information requests, media requests, or union or other professional association requests.
- P. Fargo Police Department will assist in the redaction of any video or audio portion of TFO recordings as requested by DEA prior to public release unless doing so would violate a federal court order. Redactions will be determined in accordance with DEA policy.

For the Drug Enforcement Administration:

Justin C. King
Special Agent in Charge

Date: _____

For the Fargo Police Department:

David B. Zibolski
Chief

Date: _____

Dr. Timothy Mahoney
Mayor

Date: _____

Steve Sprague
City Auditor

Date: _____

March 1, 2022

120

The Honorable Board of City Commissioners
City of Fargo
225 N 4th St
Fargo, ND 58102

RE: RFP19018, Extend Contract for Concrete Utility Cut Repairs with Q3 Contracting Inc.

Commissioners:

On May 6, 2019, City Commission approved to contract for Concrete Utility Cut Repairs in response to RFP19018. The contracted service makes concrete repairs to roadways, sidewalks, and driveways in locations the Mains & Hydrants Department has made excavations for water main infrastructure repairs. The contracted service allows for an expedited repair of these locations.

A three-year contract was executed with Q3 Contracting Inc. with the option to extend two additional years in one-year increments. The contractor has performed well and the initial three-year contract will expire on June 30, 2022. Public Works Staff and Q3 Contracting Inc. would like to extend the contract one additional year.

Q3 Contracting Inc. has requested a price adjustment to match labor and material cost increases. The contractor requested a total increase of 5.94% made up of 3.84% for labor union wage increases and 2.10% for material cost increases. The updated pricing will remain in effect through June 30, 2023. All other terms and conditions of the contract will remain the same.

RECOMMENDATION:

RFP19018: I/we suggest motion to extend contract for Concrete Utility Cut Repairs with Q3 Contracting Inc. for one additional year under the original terms and updated price units shown in the contract.

Respectfully submitted,



Paul Fiechtner
Services Manager
Fargo Public Works

**SERVICES AGREEMENT
CONCRETE UTILITY CUTS RESTORATION**

I. Agreement

This Agreement is between the City of Fargo, a North Dakota municipal corporation (“City”) and Q3 Contracting, Inc., a Minnesota corporation (“Contractor”) to provide repairs to concrete utility cuts, in the street, driveways and sidewalk. This Agreement shall commence on July 1, 2022 and expire on June 30, 2023.

The contract documents that comprise the entire agreement between City and Contractor include this Agreement, Task Orders, Insurance Certificates, the Request for Proposals, the Contractor Proposal, change orders, and other amendments as agreed to by the parties. All contract documents described are a part of this Agreement though they may not be attached to this Agreement or repeated herein.

II. Scope of Services

Contractor will perform restoration of concrete utility cuts for the Public Works Department. This involves work on sidewalk, streets and driveways.

Location of Cuts

Contractor will be assigned a list of addresses and sizes of the utility cuts. Contractor shall complete all locates and secure a One-Call Ticket in advance of any excavation activity. Contractor agrees to notify City inspectors as part of the restoration process, and shall secure such excavation permit as necessary in accordance with Fargo Municipal Code §18-0903.

Marking

Prior to work, Public Works personnel will paint out the area of the utility cut to be removed and replaced. Contractor shall not work beyond the designated area without express permission from Public Works personnel.

Timeframe

Contractor will be required to complete all utility cuts from the previous winter as specified by Public Works by June 30. The list will be given to Contractor no later than May 1st of the current year. Work can begin in the spring once the road restrictions have been removed.

Safety

All utility restoration services will be conducted in a safe manner, with care given to the safety of the general public. This includes having all equipment outfitted with the proper lighting devices so as to be visible while operating. Contractor shall be responsible for barricading the excavation in conformance with the Manual on Uniform Traffic Control Devices, and take such other precautions as are required by Fargo Municipal Code §18-0907.

Property Damage

Contractor will be solely and wholly responsible for any damage to property caused by Contractor's excavation activities. Contractor will repair, to the satisfaction of the Public Works Department, any damaged property in a timely manner in the spring season after the terms of this Agreement. Property damage includes but is not limited to damage to homeowner turf, sprinkler systems, fences, etc. as a result of utility restoration services. Public Works shall endeavor to notify Contractor of any damages within a reasonable time of notice or detection.

III. Responsibility of the City

City shall oversee the execution of this Agreement and disbursing of funds.

IV. Contractor's Compensation and Method of Payment

City will reimburse Contractor for services rendered per Square foot or linear foot as shown in the attached Exhibit A. All final invoices shall be submitted no later than November 1 of the contract year.

V. Termination of the Agreement

This Agreement may be terminable at will by either party after giving ten (10) days written notice to the other party.

VI. Assignability

This Agreement will not be assigned or transferred by Contractor to another party without the prior written consent of City.

VII. Hold Harmless and Insurance

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this Agreement. All insurance (Worker's Compensation, Comprehensive General Liability, and/or Automobile) shall be maintained at the expense of Contractor during the term of this Agreement. Contractor shall secure and maintain the insurance coverages as stated in the Request for Proposal, made a part of this agreement, naming the City as an additional insured. A copy of the Certificate of Insurance shall be provided to City in advance of any excavation activities pursuant to this Agreement.

VIII. Contractor Records

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this Agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or its authorized representatives, shall have access to any records of Contractor pertinent to the Agreement.

IX. Monitoring and Evaluation

City may monitor and evaluate Contractor progress and performance to assure that the terms of this Agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

X. Independence of Recipient

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

XI. Conflict of Interest

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

XII. Force Majeure

Neither party shall be liable for damages or deemed in default of this Agreement and any Authorization for Services hereunder to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

XIII. Severability

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

XIV. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

XV. Dispute Resolution

Contractor and City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution procedure. Nothing prevents the parties from pursuing litigation in the appropriate State or Federal court.

IN WITNESS WHEREOF, the undersigned enter into this Agreement.

Date: 3-1-22

Q3 Contracting, Inc., a Minnesota Corporation

By: *Jon Moulton*

Its: Sr VP

Date: _____

CITY OF FARGO, North Dakota, a North
Dakota Municipal Corporation

Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steve Sprague, City Auditor

EXHIBIT A

<u>Item 1 (ADA Truncated Domes)</u>		
Q3 Contracting Inc.	\$	70.98 SF
<u>Item 2 (Concrete Pavement Repair)</u>		
Q3 Contracting Inc.	\$	13.03 SF
<u>Item 3 (Concrete Sawing)</u>		
Q3 Contracting Inc.	\$	7.95 LF
<u>Item 4 (Curb and Gutter Repair)</u>		
Q3 Contracting Inc.	\$	42.96 LF
<u>Item 5 (Concrete Sidewalk Replacement)</u>		
Q3 Contracting Inc.	\$	9.43 SF
<u>Item 6 (Concrete Driveway Repair)</u>		
Q3 Contracting Inc.	\$	11.71 SF
<u>Item 7 (Concrete Removals)</u>		
Q3 Contracting Inc.	\$	5.30 SF

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March 1, 2022

The Honorable Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

RE: 2022 Tennant M20 Sweeper / Scrubber (PBC186080)

Commissioners:

A cost evaluation process was started in January of 2022 for the purchase of a new Sweeper / Scrubber for the City Hall parking garage. North Dakota and Minnesota State bids along with local vendors were researched and evaluated. It was determined that utilizing a purchasing consortium was the best solution for the purchase. The Minnesota State bids has contract number 186080 (Industrial sweeper/scrubber Equipment) available that meets all of the City of Fargo purchasing guidelines.

The review committee, consisting of Bekki Majerus and Tanner Smedshammer, determined which proposals met the specifications required. A proposal synopsis is attached for your clarification and consideration. It is our recommendation to purchase from Tennant Sales and Service Company using the Minnesota State bids contract. The Finance Committee has approved the transfer of funds to cover the cost of this purchase.

SUGGESTED MOTION:

Approve the recommendation to purchase one (1) Tennant M20 Sweeper/Scrubber thru the Minnesota State bids Contract for the total amount of \$65,573.46.

Respectfully Submitted,

Tanner Smedshammer
Fleet Purchasing Manager

CITY OF FARGO
225 4TH ST N
FARGO, ND 58102-4817
Tanner Smedshammer

Jeremy Hanson
Tennant Sales and Service Company
10400 Clean Street
Eden Prairie, MN 55344
701-226-5505

TENNANT
COMPANY

Quote Date :

1/3/2022

US Date Rev - 12/31/2021

BUILT-IN "TENNANT VALUE" INCLUDES:

FloorSmart™ Cleaning Technology - 40" (1020 mm) Path
MaxPro2™ Hydraulic Technology
1-Step™ One Button Operation
Touch-N-Go™ Wheel Mounted Module
Steering Wheel Mounted Horn
Steering Wheel Mounted Water Shut Off
Recovery Tank Full/Solution Tank Empty Indicator
Yellow Maintenance Touch Points
Low Oil Pressure/High Coolant Temp Shutdown (G/LPG only)
Built-In Maintenance Diagnostics w/ Service Reminder
ErgoSpace™ Operator Compartment
Tilt Steering Wheel w/ Horn
Deluxe Suspension Seat
Retractable Seat Belt
Ergonomic Propel Pedal
Cup Holder
Operator Video and Interactive DVD
Operator Manual and Parts Manual
Operator Checklist and Wall Chart
Underwriters Laboratory (UL®) Certification

Standard Hybrid Scrub/Sweep Brushes
Hygenic® Solution and Recovery Tanks
56 gal (212 L) Solution Tank
72 gal (272 L) Recovery Tank
16 gal (60 L) Demisting Chamber
Dura-Track™ Parabolic Rear Squeegee
SmartRelease™ Breakaway System
Linatex Squeegees
Reverse and Double Scrubbing Capable
Variable Drain Valves™
No Tool Squeegee & Brush Change
High-Capacity, Duramer™ Multi-Level Dump Hopper
3.9 ft³ (110 L) or 390 lbs (177 kg) Usable Capacity
60-inch (152 cm) Variable Dump Height
Thermo-Sentry™ Hopper Fire Sensor
Multi-Level Locking Hopper Safety Arm
InstantAccess™ No Tool Panel Filter Change
Dual-seal, Self-locating Synthetic Panel Filter
78 ft² (7.3 m²) Pleated Media with 99 % Efficiency
Grip-N-Go™ Corner Rollers
Head, Tail and Back-up Lights

TENNANT COMPANY WARRANTY

36 MONTHS OR 2000 HOURS - PARTS

24 MONTHS - LABOR

6 MONTHS - TRAVEL

10 YEARS ON DURAMERTM TANKS

CUSTOM options may add 1 week or more to standard lead times.

**Quote Request Information**

☐ Fax (quote only)
☐ Mail (quote, lit, specs)
☐ Fax + Mail

Primary Use

☐ Inside
☐ Outside

Description	Reference #	Price Each	Qty	Extended Price
Pre-Configured (Note 1-3)				
Quick Ship M20 Rider - Sweeper-Scrubber, LPG (w/ LP Tank), Linatex Squeegee, UL® Type LP, Side Brush Right Hand Scrubbing, Heavy Duty Squeegee Protection, AV BU Alarm - Strobe on Tank, Fire Extinguisher, Trailer Transport Kit, Polypropylene Main Brushes, Heavy Duty Polypropylene Side Scrub Brush, Operator Manual English, Parts Manual, Operator Video, Pad Wrap Packaging	MV-M20-0037	\$69,759.00	1	\$ 69,759.00

The above listed configuration is a stock unit - Configuration cannot be altered, changed or added to.

Machine Subtotal \$ 69,759.00**Discounts**

MINNESOTA STATE CONTRACT #186080	Discount %	6	1	\$ (4,185.54)
FREIGHT FREE	Freight	\$ -	1	\$ -
TAX EXEMPT	Tax		1	\$ -
MACHINE TOTAL*				\$ 65,573.46

Is customer interested in financing?

Yes

Wells Fargo - Leasing Calculation Option:		Option 1		Option 2	
	Purchase Option:	Monthly Payment	Cost Per Day	Monthly Payment	Cost Per Day
			\$1 Buyout Lease	Fair Market Value Scrubber Lease	
	24 Months	\$3,118.88	\$102.63	\$2,619.94	\$86.13
	36 Months	\$2,149.21	\$70.86	\$1,898.07	\$62.40
	48 Months	\$1,886.64	\$64.76	\$1,573.97	\$51.76
	60 Months	\$1,378.41	\$45.26	\$1,349.07	\$44.36

Benefits of Equipment Financing:

- Spreads out investment over time.
- Preserve capital.

- Keep current with latest technology.
- Service and parts bundling available.

GT

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March 2, 2022

The Honorable Board of City Commissioners
City of Fargo
Fargo, ND 58102

RE: Amendment to Purchase Agreement for the Acquisition of 2414 7th Avenue N.

Commissioners:

At the December 13, 2021, Commission meeting, authorization was given to proceed with the purchase of 2414 7th Avenue N. As part of that authorization, the Mayor signed the enclosed Purchase Agreement. Since that time, the property owner has decided to enter into an IRC Section 1031 tax deferred exchange rather than proceed with a standard cash out purchase. In order to document the change the City Attorney has prepared the enclosed Addendum to the original Purchase Agreement. At this time, we are requesting authorization to execute the enclosed addendum.

RECOMMENDED MOTION: I/we hereby move to approve and authorize the execution of the enclosed Addendum to the original Purchase Agreement with James P. Sabo.

Respectfully submitted,



Ben Dow
Public Works Director

ADDENDUM TO PURCHASE AGREEMENT

THIS Amendment amends that certain AGREEMENT, made and entered into on December 13, 2021 by and between **JAMES P. SABO, by and through his Power of Attorney Sara Sabo**, hereinafter "Seller", and **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter "City" or hereinafter "Buyer",

WHEREAS, Seller is the owner of real estate situated in the County of Cass and State of North Dakota described as follows:

Lots Seventeen, Eighteen, Nineteen and Twenty, in Block Eight, of Tyler's Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

The legal description was obtained from a previously recorded instrument ("Property").

The Property is commonly known as 2414 7th Avenue North, Fargo, ND 58102;
and


WHEREAS, Buyer and Seller agree to amend that certain Purchase Agreement to recognize tax matters.

NOW, THEREFORE, for good and valuable consideration hereby acknowledged, the parties hereto agree to amend the Purchase Agreement as follows:

1. Buyer is aware and acknowledges that Seller intends to perform an IRC Section 1031 tax deferred exchange. Seller requests Buyer's cooperation in such an exchange and agrees to hold Buyer harmless from any and all claims, costs, liabilities, or delays in time resulting from such an exchange. Buyer agrees to an assignment of this contract by the Seller.
2. All other terms and conditions of the aforementioned Purchase Agreement shall remain in full force and effect.

DATED this 2 day of march, 2022.

SELLER:


James P. Sabo, by and through his Power of

Attorney, Sara Sabo

DATED this _____ day of _____, 2022.

BUYER:

CITY OF FARGO, NORTH DAKOTA
a municipal corporation

Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 13 day of December, 2021, by and between **JAMES P. SABO** hereinafter "Seller", and **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter "City" or hereinafter "Buyer",

WITNESSETH:

WHEREAS, Seller is the owner of real estate situated in the County of Cass and State of North Dakota described as follows:

Lots Seventeen, Eighteen, Nineteen and Twenty, in Block Eight, of Tyler's Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

The legal description was obtained from a previously recorded instrument ("Property").

The Property is commonly known as 2414 7th Avenue North, Fargo, ND 58102.

WHEREAS, Buyer offered to purchase the Property in accordance with the terms stated herein, and Seller has agreed to sell the Property to Buyer.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements of the parties, it is hereby agreed as follows:

1. Subject Matter. The subject matter of this agreement is the Property described.
2. Purchase Price. The purchase price for the Property is Four Hundred Twelve Thousand Two Hundred Dollars (\$412,200.00).
3. Payment of Purchase Price. Buyer shall present a certified check at the time of closing for the full amount of the purchase price. Any mortgages or liens will be paid at Closing, and Seller will receive the balance, less any escrow amounts, if any, in cash at Closing.
4. Deed. Seller shall sign a Warranty Deed. Buyer will take title as follows:
City of Fargo, North Dakota, a municipal corporation.
5. Closing Date and Transfer of Possession. Closing shall take place as soon as possible. Buyer shall take possession of the real estate on the day of closing. The property is currently vacant.
6. Abstract and Closing Costs. Buyer shall pay for the cost of continuation of the abstract for said property to a recent date. Said abstract must show good and

marketable title in Seller free and clear of all liens and encumbrances, other than those that will be handled at the time of closing. Buyer agrees to pay for all costs associated with Closing, including Warranty Deed preparation.

7. Taxes and Utilities. Taxes and installments of special assessments for the year of closing shall be prorated between the parties to the date of closing based upon current total hue value as calculated by the County of Cass, ND, as of the date of closing. Prior year taxes and assessments must be paid by Seller in advance of closing.
8. Warranty. Seller provides no express or implied warranties on the subject property.

DATED this 7 day of December, 2021.

SELLER:


James P. Sabo

DATED this 13 day of Dec., 2021.

BUYER:

CITY OF FARGO, NORTH DAKOTA
a municipal corporation


Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:


Steve Sprague, City Auditor

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Location: 1123 9th Avenue S
 Type: Acquisition City Property
 Date of Hearing: 2/14/2022

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Routing
 City Commission
 PWPEC File
 Project File

Date
 3/7/2022
 X
 Shawn Bullinger

The Committee reviewed a letter from Land Acquisition Specialist, Shawn Bullinger, regarding the sale of City owned parcel at 1123 9th Avenue South.

As recommended by PWPEC on November 22, 2021, staff reached out to the adjacent landowners to gauge interest in the parcel at 1123 9th Avenue South. Only one of the adjacent property owners, 814 University Drive South, has expressed interest in the parcel. Engineering has negotiated a price with Lawrence Wittman (814 University Drive South) of \$1,000.

Staff is seeking a recommendation to move forward with the sale of the property.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to recommend approval of the resolution authorizing the sale of the property, purchase agreement, and quit claim deed located at 1123 9th Avenue South to Lawrence Wittman for \$1,000.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve the resolution authorizing the sale of the property, purchase agreement, and quit claim deed located at 1123 9th Avenue South to Lawrence Wittman for \$1,000.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

Developer meets City policy for payment of delinquent specials
 Agreement for payment of specials required of developer
 Letter of Credit required (per policy approved 5-28-13)


Yes	No
N/A	
N/A	
N/A	

COMMITTEE

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Bruce Grubb, City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Brenda Derrig, City Engineer
 Kent Costin, Finance Director

Present	Yes	No	Unanimous
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:


 Brenda E. Derrig, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Shawn Bullinger
Date: February 14, 2022
Re: Acquisition of City Property

Background:

As recommended by PWPEC on November 22, 2021, I have reached out to the three adjacent landowners to gauge interest in the parcel at 1123 9th Avenue South. Only one of the adjacent property owners, 814 University Drive South, has expressed interest in the parcel. I have negotiated a price with Lawrence Wittman (814 University Drive South) of \$1,000 and am seeking a recommendation to move forward with sale of the property at 1123 9th Avenue South.

Recommended Motion:

Recommend staff to move forward with the sale of property located at 1123 9th Avenue South to Lawrence Wittman.

SGB/klb

Attachment

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Acquisition City Property

Location: 1123 9th Avenue S

Date of Hearing: 11/22/2021

RoutingDate

City Commission

PWPEC File

Project File

X
Shawn Bullinger

The Committee reviewed a letter from Land Acquisition Specialist, Shawn Bullinger, regarding the possible sale of a City owned parcel at 1123 9th Avenue South.

On November 3, Shane Cullen of Park Company Realtors contacted the City about a parcel at 1123 9th Avenue South, which is adjacent to his client's property. This parcel was created when the parceling of 814 University Drive South happened to maintain alley access for 1127 9th Avenue South. Shane was directed to contact the owner at 1127 9th Avenue South to see if they had interest in maintaining this parcel for alley access. On November 9, he email the relinquishment along with a request to combine this parcel with 814 University Drive South.

Assessors currently have \$1,000 on this parcel. In discussing with Assessors they have property in this area around \$6.75/SF which would put the parcel at \$3,037.50.

The Committee discussed the request and directed Shawn to contact all three parcels adjacent to the City owned parcel to determine if there is additional interest. If not, Shawn can negotiate a price with the Owner of 814 University Drive South or he would request proposals if there is more than one interested party.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to direct Engineering to contact all three parcels adjacent to the City owned parcel to determine if there is any additional interest.

RECOMMENDED MOTION

No Commission Action.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

Developer meets City policy for payment of delinquent specials
Agreement for payment of specials required of developer
Letter of Credit required (per policy approved 5-28-13)

Yes	No
N/A	
N/A	
N/A	

COMMITTEE

Tim Mahoney, Mayor
Nicole Crutchfield, Director of Planning
Steve Dirksen, Fire Chief
Bruce Grubb, City Administrator
Ben Dow, Director of Operations
Steve Sprague, City Auditor
Brenda Derrig, City Engineer
Kent Costin, Finance Director

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

COMMISSIONER _____ introduced the following resolution and moved its adoption:

RESOLUTION AUTHORIZING SALE OF PROPERTY

WHEREAS, the City of Fargo is the owner of a parcel of land located at 1123 9th Avenue South, Fargo, ND 58102 [hereinafter the "Subject Property"]; and

WHEREAS, an adjacent property owner has expressed an interest in purchasing the Subject Property from the City; and

WHEREAS, Fargo Municipal Code §3-0105 provides that if the board of city commissioners estimates the value of real property to be \$5,000 or more, the property may only be sold by public sale; and

WHEREAS, the estimated value of the Subject Property is below \$5,000, and

WHEREAS, it is the wish and desire of the board of city commissioners that the Subject Property be sold, so that the property can be returned to the tax rolls and put to good use.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF CITY COMMISSIONERS,

1. The City does not have a present or future use for the Subject Property; and
2. The value of the Subject Property is less than \$5,000; and
3. The City Auditor is hereby authorized to dispose of the above described property by private sale, in accordance with Fargo Municipal Code 3-0105.

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS _____. The following were absent and not voting: _____, and the following voted against the same: _____, whereupon the resolution was declared duly passed and adopted.

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

QUITCLAIM DEED

THIS INDENTURE, Made this ____ day of _____, 2022, between the **CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a North Dakota municipal corporation, 225 4th Street North, Fargo, North Dakota, Grantor, whether one or more, and **LARSON WITTMAN PROPERTIES, LLC**, a North Dakota limited liability company, Grantee, whose post office address is PO Box 341, Glyndon, Minnesota 56547-0341.

For and in consideration of sum of One Dollar (\$1.00) and other valuable consideration, Grantor does hereby QUITCLAIM to the Grantee, all of the following real property lying and being in the County of Cass, and State of North Dakota, and described as follows, to-wit:

East Ten (10) Feet of the North Forty-Five (45) Feet of Lot Three (3) of Block "P", Chas. A. Roberts Subdivision, City of Fargo, according to the plat on file in the Register of Deed's Office, Cass County, North Dakota.

I certify that the requirement for a report or statement of full consideration paid does not apply because this deed is for one of the transactions exempted by subdivision (h) of subsection 6 of N.D.C.C. 11-18-02.2.

DATED: _____

Grantee or Agent

TO HAVE AND TO HOLD, the above quitclaimed premises, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, its heirs and assigns, FOREVER.

WITNESS, the hand of the Grantor:

City of Fargo, a North Dakota
Municipal Corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared **Timothy J. Mahoney, M.D.** and **Steven Sprague**, to me known to be the Mayor and City Auditor, respectively, of the **City of Fargo**, a North Dakota municipal corporation, described in and that executed the within and foregoing instrument, and acknowledged that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, North Dakota

The legal description was prepared by:
City of Fargo, Engineering Department
225 4th Street North,
Fargo, ND 58102
701-241-1545

This document was prepared by:
Kasey D. McNary
Assistant City Attorney
Serkland Law Firm
10 Roberts Street N
Fargo, ND 58102
(701) 232-8957
kmcnary@serklandlaw.com

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 1 day of March, 2022, by and between **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter "City" or "Seller", and **LARSON WITTMAN PROPERTIES, LLC**, hereinafter "Buyer",

WITNESSETH:

WHEREAS, Seller is the owner of real estate situated in the County of Cass and State of North Dakota described as follows:

East Ten (10) Feet of the North Forty-Five (45) Feet of Lot Three (3) of Block "P", Chas. A. Roberts Subdivision, City of Fargo, according to the plat on file in the Register of Deed's Office, Cass County, North Dakota.

WHEREAS, the city of Fargo has indicated a desire to sell the real estate; and,

WHEREAS, Buyer is willing to purchase the real estate in accordance with the terms stated herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements of the parties, it is hereby agreed as follows:

1. Subject Matter. The subject matter of this agreement is the real estate described.
2. Purchase Price. The purchase price for the real property identified is as follows: One Thousand Dollars (\$1,000).
3. Payment of Purchase Price. Buyer shall present a certified check at the time of closing for the full amount of the purchase price.
4. Deed. Seller shall sign a Quitclaim deed. Buyer will take title as follows: Larson Wittman Properties, LLC.
5. Closing Date and Transfer of Possession. Closing shall take place as soon as possible. Buyer shall take possession of the real estate on the day of closing. The property is currently vacant.
6. Warranty. Seller provides no express or implied warranties on the subject property.

DATED this __1__ day of March 2022.

BUYER:

DocuSigned by:

4EB5E1D94B2E4450
Larson Wittman Properties, LLC

DATED this _____ day of March 2022.

SELLER:

CITY OF FARGO, NORTH DAKOTA
a municipal corporation

Timothy Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

REPORT OF ACTION**UTILITY COMMITTEE**

(24)

Project No. TBD

Type: Apex Task Order #WA08
WTP Filter Design & BiddingLocation: Water Treatment Plant (435 14th Avenue South)

Date of Hearing: 3/3/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>3/7/2022</u>
Project File	<u> </u>

Troy Hall, Water Utility Director, presented the attached memo regarding a proposed Apex Engineering (Apex) task order for final design and bidding of Filter Improvements in the 1997 Lime Softening Water Treatment Plant. This is a rehabilitation/retrofit project of the existing filters to a more modern filter design. New technology, Granular Activated Carbon (GAC), has been pilot tested to prove out performance. Construction is scheduled to take place during the winter of 2022-23. From a capacity perspective, the filters cannot be out-of-service during the summer (high water demand) months. The task order is in the amount of \$320,926, which is about 5 percent of the estimated construction cost of \$6.7 million dollars. The project will be funded through a low-interest State Revolving Fund (SRF) loan. This project is in the 20-Capital Improvement Plan and 2022 budget.

MOTION:

On a motion by Brenda Derrig, seconded by Scott Olson, the Utility Committee voted to approve the proposed Task Order #WA08 with Apex Engineering in the amount of \$320,926 for engineering services related to the design and bidding of Filter Improvements in the lime softening water treatment plant.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance				
Brian Ward, Water Plant Supt.	<u>X</u>			
Mark Miller, Wastewater Plant Supt.	<u>X</u>			
Bruce Grubb, City Administrator	<u>X</u>			
Scott Liudahl, City Forester	<u>X</u>			
Terry Ludlum, Solid Waste Utility Director	<u>X</u>			
James Hausauer, Wastewater Util. Director	<u>X</u>			
Troy Hall, Water Utility Director	<u>X</u>			
Ben Dow, Public Works Operations Director	<u>X</u>			
Brenda Derrig, City Engineer	<u>X</u>			
Dan Portlock, Water Utility Engineer	<u>X</u>			
Scott Olson, Solid Waste Utility Engineer	<u>X</u>			
Jason Halsne, Enterprise Control Systems Coord.				

ATTEST:


 Troy B. Hall
 Water Utility Director

C: Tim Mahoney, Mayor
 Commissioner Strand
 Commissioner Piepkorn
 Commissioner Preston

MEMORANDUM
February 28, 2022

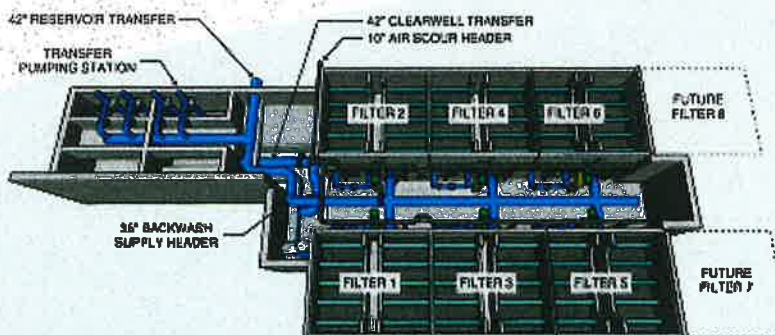
To: Utility Committee

From: Troy B. Hall, Water Utility Director *TBH*

Re: Apex Task Order #WA08 – Filter Improvements Final Design & Bidding

Attached, please find a task order proposal from Apex Engineering Group (Apex) for final design and bidding services of Lime Softening WTP Filtration Improvements. After several years of planning and pilot testing, the Water Utility is ready for the final design of this project. Under this project the existing anthracite (coal) filter media will be changed out to Granular Activated Carbon (GAC), a more modern design for ozone facilities. There are several benefits to GAC filter media including improved taste & odor compound removal. This task order is in the amount of \$320,926. Carollo Engineers, Inc. will be a sub-consultant as a nation technical firm for the final design. The project has a cost estimate of about \$6 million dollars. The final design and bidding will be about 5% of the project cost.

Water Utility staff is working with the North Dakota Department of Environmental Quality (DEQ) to include the filtration improvements project in an existing SRF loan in place of a high service pump station improvements project. Bidding is expected to take place this coming summer and construction of the filter rehabilitation project needs to be in the winter (low water demand period) of 2022-2023.



Filter and piping layout in the 1997 Lime Softening Water Treatment Plant.

The North Dakota Department of Environmental Quality (DEQ) required a pilot study for any new filter media/technology being proposed as a capital project for Fargo WTP. The pilot study is now complete from a DEQ perspective. The Water Utility provided DEQ quarterly updates during pilot study work to keep DEQ involved in findings. Data from the pilot study is being reviewed and put into a final report. Filtration performance is highly regulated by the United States Environmental Protection Agency (EPA). The current filter media in the LSWTP is approaching 25 years old and is at its useful life's end.

With long lead times for project materials, the GAC filter media (36 weeks) lead time and new underdrain system will need to be procured ahead of bidding for the project to be constructed next winter. As part of the project, the filter underdrain system profile needs to be lowered to make room

for 36-inches of GAC media. The procurement of needed items will be according to Purchasing Policy through the Utility Committee, Finance Committee, and City Commission.

This task order will be billed hourly. The following is the scope, estimated hours, and cost breakdown for this task order:

<u>Task Number and Task Name</u>	<u>Est. Hours</u>	<u>Amount</u>
Basic Services		
Task a. Project Management	75	\$ 14,432
Task b. Equipment Pre-procurement Service	148	\$ 25,310
Task c. NDDEQ Coordination Services	108	\$ 15,860
Task d. Final Design Services	1,440	\$243,490
Task e. Bid Period Services	128	\$ 21,834
Total	1,899	\$320,926

Financial Considerations

Water Utility staff is working with the North Dakota Department of Environmental Quality (DEQ) to include the filtration improvements project in an existing State Revolving Fund (SRF) loan instead of a high service pump station improvements project. The overall cost for the filter improvements project fits well within the capacity for this SRF loan. This filter improvements project was identified as SRF funded in the 2022 budget for the Water Utility.

SUGGESTED MOTION:

Approve Task Order #WA08 with Apex Engineering Group in the amount of \$320,926 to complete Final Design and Bidding for Filtration Improvements in the 1997 Lime Softening WTP.

Your consideration in this matter is greatly appreciated.

Task Order No. WA08 – Filtration Improvements – Final Design and Bidding Services

In accordance with Paragraph 1.01 of the Agreement between Owner and Engineer for Professional Services – Task Order Edition, dated January 1, 2021 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: February 23, 2022
- b. Owner: City of Fargo – Water Division
- c. Engineer: Apex Engineering Group, Inc.
- d. Specific Project (title): Filtration Improvements – Final Design and Bidding Services
- e. Specific Project (description): Design and Bid Period Services for the Filtration Improvements at the Fargo Water Treatment Plant

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:

☐ as follows: ***See attached Scope of Services***

~~B. Resident Project Representative (RPR) Services~~

~~If the scope of services established in Paragraph 2.A above includes RPR services, then Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.~~

~~C. Designing to a Construction Cost Limit~~

~~Under this Task Order Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$ _____. The bidding or negotiating contingency to be added to the Construction Cost Limit is _____ percent.~~

D. Other Services

Engineer shall also provide the following services: ***None***

- E. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

Task Order Form

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and American Society of Civil Engineers. All rights reserved.

3. Additional Services

A. Additional Services that may be authorized or necessary under this Task Order are:

☐ as follows: **None**

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following: **Attached Scope of Services**

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

<u>Phase/Task</u>	<u>Completion Date (week of)</u>
Execute Engineering Agreement Task Order	February 28, 2022
90% (Draft) Design Documents	May 6, 2022
100% (Final) Design Documents, Submit to NDDEQ, Advertise for Bids	June 6, 2022
Notice of Award	August 1, 2022

6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services		
a. Project Management	\$14,432	Hourly NTE
b. Equipment Pre-procurement Services	\$25,310	Hourly NTE
c. NDDEQ Coordination Services	\$15,860	Hourly NTE
d. Final Design Services	\$243,490	Hourly NTE
e. Bid Period Services	\$21,834	Hourly NTE
TOTAL COMPENSATION	\$320,926	Hourly NTE

Amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order: *None*

8. Other Modifications to Agreement and Exhibits: *None*

9. Attachments: *Scope of Services – Filtration Improvements – Final Design and Bid Period Services*

10. Other Documents Incorporated by Reference: *None*

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is **February 23, 2022**.

OWNER:

By: City of Fargo

Name:

Troy HallTitle: Water Utility Director

Date: _____

ENGINEER:

By: Apex Engineering Group, Inc.

Name:


Timothy J. Paustian, PETitle: Vice PresidentDate: February 23, 2022Engineer License or Firm's COCOP #975C
Certificate No. (if required): _____State of: North DakotaDESIGNATED REPRESENTATIVE FOR TASK
ORDER:Name: Troy HallTitle: Water Utility DirectorAddress: 435 14th Avenue South
Fargo, ND 58103E-Mail THall@FargoND.gov
Address: _____Phone: 701-476-6741

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Timothy J. Paustian, PETitle: Project ManagerAddress: 4733 Amber Valley Parkway South
Fargo, ND 58103E-Mail Tim.Paustian@ApexEngGroup.com
Address: _____Phone: 701-373-7991

Task Order Form

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Water | Transportation | Municipal | Facilities

Scope of Services

Task Order No. WA08

Filtration Improvements – Final Design & Bid Period Services

City of Fargo, North Dakota
February 23, 2022

Task No.	Description
1	Project Management
2	Equipment Pre-procurement Services
3	NDDEQ Coordination Services
4	Final Design Services
5	Bid Period Services

Project Background

The City of Fargo (City) has been working towards improvements to their filtration processes at the Lime Softening Water Treatment Plant (LSWTP). These improvements include the replacement of granular media with the intent of reducing taste and odor forming compounds in the filter effluent.

In 2019, Apex Engineering Group, Inc. (Apex), and its subconsultant, Carollo Engineers (Carollo) completed a technical memorandum titled “Filter Improvements at the Fargo Water Treatment Facility”. The report contained an evaluation of the existing condition of the filters and presented several options for the replacement of media within the filters of the LSWTP.

More recently, Apex and Carollo completed filter surveillance activities during the spring of 2021 at the LSWTP. The purpose was to conduct a filter investigation in the field to develop a better understanding of the condition of the existing filter underdrains and conduct an operational assessment of the filter. This information will be beneficial prior to beginning any significant improvements to the filtration system.

The City recently completing a pilot study to fine tune design parameters and media selection, as required by the North Dakota Department of Environmental Quality (NDDEQ).

Task Order No. WA05 involved the preparation of a Preliminary Design Report (PDR) for the filter improvements. This PDR was recently completed and the City wishes to proceed with Final Design and Bidding. The City further wishes to procure some of the long lead time items so that construction make take place during the winter of 2022-2023. Finally, the City wishes to complete the design on an accelerated schedule to meet the construction timeframe.

The attached Scope of Services details the effort necessary to accomplish the final design and bid period services associated with the filtration improvements.



Task No. 1.0 – Project Management

Objective:

To provide management of engineers, technicians, subconsultant and all team members throughout this project, including contract administration and quality assurance / quality control. To provide a single point of contact for the City of Fargo throughout the duration of the project.

Activities:

1. Review and execute Task Order between the City of Fargo, North Dakota and Apex Engineering Group, Inc. (Apex).
2. Oversee Engineers and Technicians assigned to the project.
3. Attend and report at project update meetings, as necessary.
4. Provide communications and coordination between City of Fargo and Apex team members.
5. Provide quality assurance/quality control throughout all phases of the project.

City of Fargo Responsibilities:

- ✓ Execute task order between City of Fargo and Apex.
- ✓ Provide requested information in a timely manner.

Apex Responsibilities and Deliverables:

- ✓ Review and execute task order with City of Fargo in a timely manner.
- ✓ Gather, organize, review and return (if applicable) any necessary information.
- ✓ Coordinate all activities with project team.
- ✓ Schedule and attend project update meetings.
- ✓ Communicate with City of Fargo on project updates and schedule.



Task No. 2.0 – Equipment Pre-procurement Services

Objective:

In order for the project to be completed during the winter of 2022/23, certain pieces of equipment need to be pre-procured by the City. These items are the filter underdrains and the filter media. Procurement will be done through a sole source process that will comply with NDDEQ and City of Fargo regulations.

Activities:

1. Sole Source Documentation
2. Equipment Specifications
3. Equipment Solicitation
4. Procurement Documents and Submittal Review.

City of Fargo Responsibilities:

- ✓ Attend meetings with Engineer.
- ✓ Provide comments on procurement documents.
- ✓ Provide input on procurement process.
- ✓ Communications with NDDEQ, as appropriate.
- ✓ Execute Purchase Order for equipment procured.

Apex Responsibilities and Deliverables:

- ✓ Communicate with NDDEQ on sole source justification.
- ✓ Prepare equipment specifications and solicit responses from manufacturers.
- ✓ Receive equipment solicitation and make recommendation to City.
- ✓ Coordinate Purchase Order with City.
- ✓ Review submittals for procured equipment.



Task No. 3.0 – NDDEQ Coordination Services

Objective:

The project will be funded, in part, through the Drinking Water State Revolving Fund (DWSRF). This Task involves administrative items necessary for the project to be funded through this program, including DWSRF bid documentation, environmental solicitations and after bid documentation.

Activities:

1. Environmental Solicitation of Views and Documents
2. SRF Coordination
3. SRF Bid Documents and Wage Determinations
4. SRF After Bid Documentation

City of Fargo Responsibilities:

- ✓ Attend meetings with Engineer and NDDEQ, as necessary.
- ✓ Provide requested information in a timely manner.
- ✓ Advertise project in official newspaper. Receive
- ✓ Provide after bid documents, as appropriate.

Apex Responsibilities and Deliverables:

- ✓ Prepare and receive responses for environmental solicitation of views.
- ✓ Deliver responses to solicitation of views to NDDEQ.
- ✓ Provide any additional information to NDDEQ for their environmental review.
- ✓ Coordinate DWSRF bid requirements with NDDEQ.
- ✓ Federal Wage Determination for Specifications.
- ✓ Compile DWSRF after bid documentation and deliver to NDDEQ



Task No. 4.0 – Final Design Services

Objective:

To provide final design services to produce plans and specifications for bidding purposes.

Activities:

1. Final design development.
2. Review meeting and coordination.
3. Final Plans and Specifications.
4. Final Design Review Meeting and Opinion of Probable Construction Cost (OPCC).

City of Fargo Responsibilities:

- ✓ Attend meetings with Engineer.
- ✓ Provide requested information in a timely manner.
- ✓ Provide Pilot Study Data, as requested.
- ✓ Provide design review comments.

Apex Responsibilities and Deliverables:

- ✓ Conduct design review meetings.
- ✓ Provide 90% Plans and Specifications to City for review.
- ✓ Provide Final Plans and Specifications to City in electronic format.
- ✓ Provide Final OPCC to City.



Task No. 5.0 – Bid Period Services

Objective:

To provide bid period services, including award and contracts.

Activities:

1. Pre-Bid Meeting.
2. Addenda and Responses to Questions.
3. Bid Opening.
4. Bid Recommendation, Award, and Contracts

City of Fargo Responsibilities:

- ✓ Authorize advertisement for bids.
- ✓ Publish Advertisement for Bids in official publication. Provide affidavit of publication to Engineer.
- ✓ Attend pre-bid meeting with Engineer.
- ✓ Provide comments on contractor questions, as appropriate.
- ✓ Attend bid opening with Engineer.
- ✓ Award bid.
- ✓ Execute Agreement between Owner and Contractor.

Apex Responsibilities and Deliverables:

- ✓ Deliver final Plans and Specifications to NDDEQ for their review.
- ✓ Prepare advertisement for bids and deliver to City.
- ✓ Attend and facilitate pre-bid meeting.
- ✓ Answer Contractor questions and issue Addenda, as appropriate.
- ✓ Attend bid opening with City.
- ✓ Review Bids and make recommendation to City.
- ✓ Prepare Agreement between Owner and Contractor and deliver to City. Deliver final copy to NDDEQ.



Project Schedule

<u>Task/Activity</u>	<u>Date (Week of)</u>
- Execute Task Order Amendment	February 28, 2022
- Final Design – 90% Review	May 6, 2022
- Advertise for Bids	June 6, 2022
- Bid Opening	July 11, 2022
- Notice of Award	August 1, 2022



REPORT OF ACTIONUTILITY COMMITTEE

(25)

Project No. WA1863

Type: LSWTP Pretreatment &
Crypto Compl. Change OrderLocation: Water Treatment Plant (435 14th Avenue South)

Date of Hearing: 3/3/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>3/7/2022</u>
Project File	<u> </u>

Dan Portlock, Water Utility Engineer, presented the attached AE2S letter and change order form for Project WA1863, Lime Softening Water Treatment Plant (LSWTP) Pretreatment Rehabilitation & Crypto Compliance. Approval of this change order will be a 0.8 percent increase in the General Contract cost. Overall change orders for the project will go to 2.9 percent. This project is funded through a low-interest State Revolving Fund (SRF) loan. Per the attached memorandum and information, the change order results in a \$28,452 cost increase and 77-day time extension for Contract No. 1 (General Construction) with CC Steel, Inc.

MOTION:

On a motion by Terry Ludlum, seconded by Ben Dow, the Utility Committee voted to approve the change order with CC Steel, Inc. for Project WA1863 resulting in a cost increase of \$28,452 and a 77-day time extension.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance				
Brian Ward, Water Plant Supt.	<u>X</u>			
Mark Miller, Wastewater Plant Supt.	<u>X</u>			
Bruce Grubb, City Administrator	<u>X</u>			
Scott Liudahl, City Forester	<u>X</u>			
Terry Ludlum, Solid Waste Utility Director	<u>X</u>			
James Hausauer, Wastewater Util. Director	<u>X</u>			
Troy Hall, Water Utility Director	<u>X</u>			
Ben Dow, Public Works Operations Director	<u>X</u>			
Brenda Derrig, City Engineer	<u>X</u>			
Dan Portlock, Water Utility Engineer	<u>X</u>			
Scott Olson, Solid Waste Utility Engineer	<u>X</u>			
Jason Halsne, Enterprise Control Systems Coord.				

ATTEST:


 Troy B. Hall
 Water Utility Director

C: Tim Mahoney, Mayor
 Commissioner Strand
 Commissioner Piepkorn
 Commissioner Preston

MEMORANDUM
March 1, 2022

To: Utility Committee

From: Troy B. Hall, Water Utility Director *TBH*

Re: WA1863 Change Order – Crypto Compliance/Pre-treatment Rehab

Attached, please find Change Order No. 2 for Contract No. 1 (General Construction) for Project WA1863, Crypto Compliance/Pre-treatment Rehab. This change order has a total cost increase of \$28,452 and is a 77 day time extension. With approval, the total percent change orders under Contract No. 1 is 2.9 percent. Project WA1863 is nearing completion. Water Utility staff is seeking approval of this change order to be placed on the next City Commission agenda. The attached AE2S letter and documentation provides a description and cost of each individual item under this change order.

Plan of Financing

This project is being funded with a low-interest SRF loan that has already been approved. This project is in the Water Utility Capital Improvement Plan (CIP) and part of the WTP Facility Plan – Phase 2.

SUGGESTED MOTION:

Approve Work Change Order No. 2 under Contract No. 1 (General Construction) as a cost increase of \$28,452 for Project WA1863, Crypto Compliance/Pre-treatment Rehab.

Your consideration in this matter is greatly appreciated.



March 1, 2022

Mr. Dan Portlock
Water Utility Engineer
City of Fargo
Water Treatment Plant
435 14th Ave S
Fargo, ND 58103-4306

**Re: Change Order No. 2 to Contract No. 1 – General Construction
Fargo LSWTP Pretreatment and Crypto Compliance Improvements
City of Fargo Project #WA1863**

Dear Mr. Portlock:

Enclosed please find Change Order No. 2 to Contract No. 1 for the above referenced project for your review and approval. Change Order No. 2 consists of previously approved Work Change Directives No. 03 through 07, which include the following changes to the project:

Change Order No. 2 to Contract No. 1 – General Construction

1. **Work Change Directive No. 03:** The re-routing of three chemical feed lines in the transfer pump area was needed in order to provide clearance for the 42-inch UV Influent and UV Effluent piping. The chemical lines re-routed consisted of two (2) polymer and one (1) ammonia line.
 - a. *Adder of \$2,100.00.*
2. **Work Change Directive No. 04:** There are six (6) 24-inch butterfly valves and electric actuators associated with the UV system. Operations staff requested that five (5) of these actuators and valves be re-oriented approximately 180 degrees to be out of the way of working areas and the floor access hatch after initial installation.
 - a. *Adder of \$15,000.00.*
3. **Work Change Directive No. 05:** Water Smith's original purchase order for the transfer pump modifications included cost estimates for replacing column pipe in the event the column pipe was not suitable for reuse. Upon pulling each of the transfer pumps, it was determined that the column pipe needed to be replaced on all four pumps.
 - a. *Adder of \$8,552.00.*
4. **Work Change Directive No. 06:** A no-dollar time extension of 77 days to the final completion date, primarily due to longer than expected material and equipment lead times. The new date for Final Completion will be May 2, 2022.
 - a. *No cost change.*



5. **Work Change Directive No. 07:** Upon the delivery and installation of the new chemical tanks, it was discovered that the divider wall between the new chemical rooms would not be able to be installed as originally detailed due to the outer diameter of the chemical tanks being larger than anticipated. The wall was modified from a 12' x 13' removable wall to a masonry block wall, with the bottom 3-feet of the wall to be grout filled for chemical containment.
- a. *Adder of \$2,800.00.*

The total amount of Change Order No. 2 to Contract No. 1 is \$28,452.00 and includes a 77-day time extension to the Final Completion Date, resulting in a new Final Completion Date of May 2, 2022.

Sincerely,

AE2S

A handwritten signature in blue ink, appearing to read "Ryan Grubb", is written over a light blue circular stamp.

Ryan Grubb, PE
Project Manager

Attachments

Date of Issuance: 03/01/2022

Effective Date: 03/01/2022

Owner: City of Fargo

Owner's Contract No.: WA1863

Contractor: CC Steel

Contractor's Project No.:

Engineer: AE2S / B&V

Engineer's Project No.: P00803-2018-021


Project: Fargo LSWTP Pretreatment and Crypto
Compliance ImprovementsContract Name: Contract No. 1 –
General Construction

The Contract is modified as follows upon execution of this Change Order:

Description: The re-routing of three chemical feed lines in the transfer pump area in order to be out of the way of the 42" UV header piping; rotation of five of the six 24" butterfly valve actuators on the UV system in order to be out of the way of working areas; the cost for Water Smith's replacement of column piping on the transfer pumps; a time extension of 77 days to the Final Completion date due to material availability and equipment lead times; the work associated with constructing a masonry block wall in the chemical rooms in lieu of the wall originally detailed.

Attachments: Work Change Directive Nos. 3, 4, 5, 6, and 7, and their respective attachments.

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ <u>3,427,000.00</u>	Original Contract Times: Substantial Completion: <u>October 30, 2021</u> Ready for Final Payment: <u>December 30, 2021</u> days or dates
[Increase] [Decrease] from previously approved Change Order No. <u>1</u> : \$ <u>72,000.00</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> : Substantial Completion: <u>December 15, 2021</u> Ready for Final Payment: <u>February 14, 2022</u> days
Contract Price prior to this Change Order: \$ <u>3,499,000.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>December 15, 2021</u> Ready for Final Payment: <u>February 14, 2022</u> days or dates
[Increase] [Decrease] of this Change Order: \$ <u>28,452.00</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: <u>December 15, 2021</u> Ready for Final Payment: <u>May 2, 2022</u> days or dates
Contract Price incorporating this Change Order: \$ <u>3,527,452.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>December 15, 2021</u> Ready for Final Payment: <u>May 2, 2022</u> days or dates

RECOMMENDED:		ACCEPTED:		ACCEPTED:	
By: <u></u>	By: _____	By: <u></u>	By: _____	By: _____	By: _____
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)			
Title: <u>Operations Manager</u>	Title: _____	Title: <u>Chief Manager</u>	Title: _____	Title: _____	Title: _____
Date: <u>3/1/2022</u>	Dat: _____	Dat: <u>3/1/2022</u>	Dat: _____	Dat: _____	Dat: _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

March 3, 2022

Honorable Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

Subject: Sole Source with Tech Sales, Inc. for Calendar Year 2022

Dear Commissioners:

Water Utility staff is seeking approval of a sole source request for Tech Sales, Inc. (Tech Sales) to purchase instrumentation, parts, and services. Tech Sales has standard products used in Water Utility facilities. This sole source request is for Calendar Year 2022 in the estimated amount of \$80,000. This request was approved by the Finance Committee on February 28, 2022. Purchases from Tech Sales are accounted for in the 2022 budget and relevant capital project codes. Tech Sales is the regional distributor for three (3) manufacturers used as standardized products in Water Utility facilities due to reliability and performance:

- Rosemount/Emerson
- OI Analytic (a Xylem Brand)
- Panametrics

More detailed information is provided in the attached Sole Source Procurement Form.

Your consideration is greatly appreciated in this matter.

Sincerely,



Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve Sole Source Request for Tech Sales, Inc. covering Calendar Year 2022 purchases for the Water Utility.



Sole Source and Piggyback Procurement Form

Sole Source and Piggyback Justification for Procurement

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Tech Sales (for Calendar Year 2022)

Estimated Dollar Amount of Purchase:

\$80,000

The project/service is required to:

Purchasing Rosemount, O/I Analytical, and Panametrics instrumentation/parts that is standard to the existing, Lime Softening Water Treatment Plant (LSWTP) and in the new Membrane Water Treatment Plant (MWTP). Rosemount, O/I Analytical, and Panametrics are standard instrumentation for WTP staff in some application for the existing WTP, new MWTP, and remote sites. Tech Sales is the regional distributor of Rosemount, O/I Analytical, and Panametrics instrumentation.

We have sufficient funding in the 2022 WTP operations budget (Fund 501, Division 3051) for minor repairs, factory calibrations, and replacement parts. Costs for some 'small' projects using Rosemount and O/I Analytical instruments will be paid via Project WA2009, 'Online Instrumentation Phase 2' or other appropriate project codes. A Rosemount water flow meter addition project to six (6) Reverse Osmosis skids may take place in 2022. This is Project WA2105 - MWTP RO Flow Meter Addn. and will increase flow stability through the RO skids. The RO skids use Rosemount flow meters as their standard instrument. O/I Analytical is a new product line represented by Tech Sales. All Total Organic Carbon (TOC) instrument in the WTP are now O/I Analytical for the manufacturer.

Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

Rosemount, O/I Analytical, and Panametrics instrumentation are the standard instrumentation in some treatment processes in the existing WTP, new MWTP, and remote sites. It make sense to keep using Rosemount, O/I Analytical, and Panametrics for several reasons:

- *Proven reliability in several existing applications.
- *Limit spare parts inventory to a limited number of vendors (to reduce inventory cost).
- *Implementation of instrumentation standards reduces the number of manufacturers related to staff training, familiarity, calibrations, setup, and troubleshooting.

Provide a brief description of how your investigation was conducted. (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. **)

Rosemount, O/I Analytical, and Panametrics instrumentation are and have been the standard for some instrumentation in the existing WTP, Water Utility remote sites, and new MWTP.

****If all sources are not investigated a competitive solicitation must be issued.**

Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

Proven reliability in several existing applications in the existing WTP and staff already has familiarity with Rosemount, O/I Analytical, and Panametrics. Some manufactures have instrumentation that performs better than other manufacturers. This understanding is gained through many years of WTP staff experience.

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

N/A

Signature: T.B. Hall
(Requestor)

Printed Name: Troy B. Hall

Department: Water Treatment Plant

Title: Water Utility Director

Date: 2/24/22

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

TBH (Requestor initials)

March 3, 2022

Honorable Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

Subject: Electrical Services Agreement with Sun Electric, Inc. for Calendar Year 2022

Dear Commissioners:

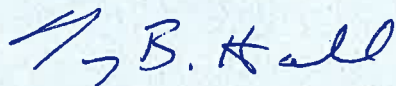
Water Utility staff is seeking approval of an Electrical Services Agreement with Sun Electric, Inc. for Calendar Year 2022. The main part of the agreement is attached and comments by the City Attorney's office have been incorporated. This agreement is similar in concept to how consulting engineers are utilized by the Water Utility. Under the agreement, Sun Electric will provide a licensed electrician for daily on site work at the water treatment plant. According to the Sun proposal, a pool of five (5) electricians will be used to provide the electrician services and coverage. Costs for these services are in the approved 2022 operations budget for the Water Treatment Plant under an Electrician Services account. Sun Electric was selected through an advertised Request for Proposals (RFP) process.

There are several benefits for Water Utility facilities that will be achieved in utilizing these electrical services under the Sun Electric agreement. Some of the benefits are:

- Lower overall cost of small electrical projects for the Water Utility.
- Increased employee safety in dealing with electrical issues at Water Utility facilities.
- Lower engineering costs to produce electrical drawings in order to receive Electrical Contractor proposals for small Water Utility electrical projects.
- More time efficiency for other Water Utility personnel in arranging and coordinating small electrical projects.

Your consideration is greatly appreciated in this matter.

Sincerely,



Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve Electrical Services Agreement with Sun Electric, Inc covering Calendar Year 2022 for the Water Utility.

ELECTRIC, INC.
Electrical Services Agreement

This Electrical Services Agreement is made effective as of January 01, 2022, by and between City of Fargo, a North Dakota municipal corporation, 225 4th Street North, and Sun Electric Inc., a North Dakota corporation.

Contractor desires to provide Electrical services to Owner and Owner desires to obtain such services from Contractor.

THEREFORE, in consideration of the mutual promises set forth below, the parties agree as follows:

DESCRIPTION OF SERVICES. Beginning on January 01, 2022, Sun Electric will provide to City of Fargo residential Electrical Services and Electrical Repairs at the property of Owner located at: 435 14th Ave. S., Fargo, North Dakota, 58103. Specifically Contractor shall provide the following electrical services:

Provide electrical services for the water treatment plant
Provide on-call service for the water treatment plant

CONTRACT DOCUMENTS. The parties hereto understand and agree this agreement is comprised of the following documents; (1) Electrical Services Agreement; (2) Request for Proposals; (3) Proposal; (4) All required licenses, permits and certifications; and (5) Insurance Certificate naming the city of Fargo as an additional insured in an amount not less than \$_____.

Subletting: Sun Electric shall not assign or sublet any portion of the work to be completed in accordance with this Agreement without first obtaining from City written consent

Independent Contractor: The parties hereto understand and agree that Sun Electric is an Independent Contractor and that the terms of this Agreement do not form an employment relationship between the city of Fargo or Sun Electric employees engaged in work pursuant to the terms of this Agreement.

SCOPE OF WORK. Contractor shall provide all labor, and perform all work necessary for the completion of the Electrical Services as described above.

Provide electrical contract services for the City of Fargo Water Treatment Plant for the 2022 year along with on-call services for the same year

PAYMENT. Payment shall be made to Sun Electric Inc., Fargo, North Dakota 58102. City of Fargo agrees to pay in installment payments of \$0.00 per 45 days.

TIME OF COMPLETION. Contractor shall commence the work to be performed under this Agreement on or before January 01, 2022 and shall substantially complete the work on or before December 31, 2022.

In addition to any other right or remedy provided by law, if City of Fargo fails to pay for the Services when due, Sun Electric has the option to treat such failure to pay as a material breach of this Agreement, and may cancel this Agreement and/or seek legal remedies.

net 45 days

PERMITS. Contractor shall apply for and obtain such permits and regulatory approvals as may be required by the local municipal/county government, the cost thereof shall be included as part of Payment to the Contractor under this Agreement.

INSURANCE. Contractor shall maintain general liability, workers compensation and builder's risk Insurance.

SURVEY AND TITLE. The Owner will indicate the property lines to the Contractor and will provide boundary stakes by a licensed land surveyor if the Owners are in doubt about the property boundaries, .

ACCESS and Security. The Owner will allow free access to work areas for workers and vehicles and will allow areas for the storage of materials and debris. Driveways will be kept clear for the movement of vehicles during work hours. The Contractor will make reasonable efforts to protect driveways, lawns, shrubs, and other vegetation. Sun Electric shall be responsible for the security of the worksite, such access limited to days and times when City personnel are on site and available to oversee the work. Sun Electric shall identify the contractors performing services pursuant to the terms of this Agreement and shall attest to the Contractor's qualifications, including background clearance necessary to perform services in the Water Treatment Plant. City shall have the right to replace the service provider with another service provider identified by Sun Electric.

FINAL INSPECTIONS AND LIENS. Upon notification by the Contractor of substantial completion of the work, the Owner and the Contractor shall inspect the work performed, and shall identify any incomplete work or deficiencies in workmanship or materials. When the Owner finds the work is completed, the Owner shall pay the Contractor any balance of the Payments to the Contractor. Upon receiving the payment the Contractor shall deliver the Owner a release of all liens.

INDEMNIFICATION. Sun Electric agrees to indemnify and hold City of Fargo harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against City of Fargo that result from the acts or omissions of Sun Electric and/or Sun Electric's employees, agents, or representatives.

WARRANTY. Sun Electric shall provide its services and meet its obligations under this Agreement in a timely and workmanlike manner, using knowledge and recommendations for performing the services which meet generally acceptable standards in Sun Electric's community and region, and will provide a standard of care equal to, or superior to, care used by contractors similar to Sun Electric on similar projects.

COMPLETION OF SERVICES. Upon the completion of the Electrical services by the Contractor, Contractor shall see to it that Owner's property is restored to the condition they were in prior to the entry by the Contractor, and the Contractor shall see to it that all portions used by the Contractor during the term of this Agreement shall be broom clean and free of debris.

DEFAULT. The occurrence of any of the following shall constitute a material default under this Agreement:

- a. The failure to make a required payment when due.
- b. The insolvency or bankruptcy of either party.
- c. The subjection of any of either party's property to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.

- d. The failure to make available or deliver the Services in the time and manner provided for in this Agreement.

REMEDIES. In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may terminate the Agreement by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have _____ days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Agreement. This Agreement supersedes any prior written or oral agreements between the parties.

SEVERABILITY. If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

AMENDMENT. This Agreement may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

GOVERNING LAW. This Agreement shall be construed in accordance with the laws of the State of North Dakota.

NOTICE. Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

SIGNATORIES. This Agreement shall be signed on behalf of City of Fargo by _____ and on behalf of Sun Electric by Harry Chyle, President and effective as of the date first above written.

Owner:

City of Fargo Water Treatment Plant

By: _____

Date:

Contractor: Sun
Electric Inc.

By: _____
Harry Chyle
President

Date:

29

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-20-L1

Type: Negative Final Balancing Change Order #6

Location: 38th Street South

Date of Hearing: 2/28/2022

Routing

City Commission

Date

3/7/2022

PWPEC File

X

Project File

Jason Leonard

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, for Negative Final Balancing Change Order #6 in the amount of -\$235,270.67, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #6 in the amount of -\$235,270.67, bringing the total contract amount to \$6,322,152.54.

On a motion by Kent Costin, seconded by Steve Sprague, the Committee voted to recommend approval of Negative Final Balancing Change Order #6 to Dakota Underground.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Negative Final Balancing Change Order #6 in the amount of -\$235,270.67, bringing the total contract amount to \$6,322,152.54 to Dakota Underground.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: Special Assessments

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

Yes No

N/A

N/A

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☐☐☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☒☒☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

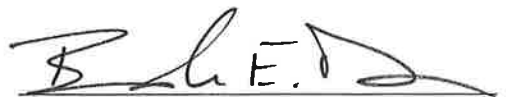
Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☒☒☐

ATTEST:



Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Jason Leonard, Project Engineer
Date: February 23, 2022
Re: Improvement District No. BN-20-L1 – Negative Final Balancing Change Order #6

Background:

Improvement District No. BN-20-L1 is for the new construction of underground utilities, concrete pavement and incidentals on 37th Street South, 38th Street South and 63rd Avenue South.

Dakota Underground is the Prime Contractor for this project.

Attached is a Negative Final Balancing Change Order for Improvement District No. BN-20-L1 in the amount of -\$235,270.67 bringing the total contract amount to \$6,322,152.54. This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

The original contract bid price for this project was \$6,095,877.39 and this Negative FBCO will bring the project final amount to \$6,322,152.54 (3.71% Increase). This Improvement District is 100% Special Assessed.

Recommended Motion:

Approve Negative Final Balancing Change Order #6 in the amount of -\$235,270.67, which brings the total contract amount to \$6,322,152.54 to Dakota Underground.

JTL/klb

Attachments



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Improvement District No	BN-20-L1	Change Order No	6
Project Name	Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals		
Date Entered	2/18/2022	For	Dakota Underground Co Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE: Final Balancing Change Order

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Sanitary Sewer	1	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	4,000.00	0.00	4,000.00	-4,000.00	0.00	0.01	-40.00
	5	F&I Pipe SDR 26 - 6" Dia PVC	LF	1,782.00	0.00	1,782.00	-1.00	1,781.00	27.00	-27.00
	6	F&I Pipe SDR 35 - 12" Dia PVC	LF	4,500.00	0.00	4,500.00	-13.00	4,487.00	47.00	-611.00
	141	F&I Pipe SDR 26 - 8" Dia PVC	LF	60.00	0.00	60.00	12.40	72.40	47.00	582.80
Sanitary Sewer Sub Total (\$)										-95.20
Water Main	8	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	3,000.00	0.00	3,000.00	-3,000.00	0.00	0.01	-30.00
	9	F&I Fittings C153 Ductile Iron	LB	5,622.00	0.00	5,622.00	-2,519.00	3,103.00	7.00	-17,633.00
	11	Relocate Hydrant	EA	1.00	0.00	1.00	-1.00	0.00	1,800.00	-1,800.00
	13	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	80.00	0.00	80.00	90.00	170.00	31.00	2,790.00
	14	F&I Pipe C900 DR 18 - 12" Dia PVC	LF	4,800.00	0.00	4,800.00	-402.00	4,398.00	41.00	-16,482.00
	16	F&I Pipe w/GB C900 DR 18 - 12" Dia PVC	LF	135.00	0.00	135.00	-135.00	0.00	70.00	-9,450.00
	18	F&I Gate Valve 12" Dia	EA	8.00	0.00	8.00	-1.00	7.00	3,130.00	-3,130.00
	19	F&I Hydrant Ext. 6" High	EA	5.00	0.00	5.00	1.48	6.48	700.00	1,036.00
	20	F&I Hydrant Ext. 12" High	EA	5.00	0.00	5.00	-5.00	0.00	800.00	-4,000.00
	21	F&I Hydrant Ext. 18" High	EA	5.00	0.00	5.00	-5.00	0.00	940.00	-4,700.00
	24	F&I Pipe 2" Dia Water Service	LF	1,020.00	0.00	1,020.00	-6.20	1,013.80	20.00	-124.00

**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Water Main		25	F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	110.00	0.00	110.00	-110.00	0.00	60.00	-6,600.00
Storm Sewer		26	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	200.00	0.00	200.00	-200.00	0.00	0.01	-2.00
		27	F&I 1-1/4" Trench Found Rock 14" thru 24" Dia	LF	1,000.00	0.00	1,000.00	-1,000.00	0.00	0.01	-10.00
		28	F&I 1-1/4" Trench Found Rock 27" thru 36" Dia	LF	1,000.00	0.00	1,000.00	-1,000.00	0.00	0.01	-10.00
		29	F&I 1-1/4" Trench Found Rock 42" thru 54" Dia	LF	876.00	0.00	876.00	-876.00	0.00	0.01	-8.76
		38	F&I Pipe 12" Dia	LF	470.00	0.00	470.00	-7.00	463.00	32.00	-224.00
		40	F&I Pipe 18" Dia	LF	798.00	0.00	798.00	-12.00	786.00	42.00	-504.00
		44	F&I Pipe 15" Dia Reinf Conc	LF	10.00	0.00	10.00	3.00	13.00	50.00	150.00
		46	F&I Pipe 24" Dia Reinf Conc	LF	180.00	60.00	240.00	15.00	255.00	56.00	840.00
		47	F&I Pipe 30" Dia Reinf Conc	LF	690.00	0.00	690.00	-6.00	684.00	76.50	-459.00
		51	F&I Pipe 54" Dia Reinf Conc	LF	475.00	0.00	475.00	-10.00	465.00	185.00	-1,850.00
		53	F&I Pipe w/GB 15" Dia Reinf Conc	LF	460.00	0.00	460.00	-2.00	458.00	52.00	-104.00
		55	F&I Pipe w/GB 24" Dia Reinf Conc	LF	90.00	40.00	130.00	10.00	140.00	86.00	860.00
		56	F&I Pipe w/GB 30" Dia Reinf Conc	LF	275.00	0.00	275.00	-1.00	274.00	103.00	-103.00
		64	F&I Rip Rap Rock	CY	500.00	0.00	500.00	-363.00	137.00	86.00	-31,218.00
		65	F&I Slope Protection 5" Thick Reinf Conc	SY	135.00	0.00	135.00	-54.20	80.80	84.00	-4,552.80
		Storm Sewer Sub Total (\$)									
Paving		69	F&I Fence	LF	306.00	0.00	306.00	-44.00	262.00	79.00	-3,476.00
		76	Subgrade Preparation	SY	27,000.00	0.00	27,000.00	-1,525.00	25,475.00	2.60	-3,965.00
		77	Subcut	CY	12,000.00	0.00	12,000.00	-12,000.00	0.00	2.50	-30,000.00
		78	F&I Woven Geotextile	SY	27,000.00	0.00	27,000.00	-1,525.00	25,475.00	1.40	-2,135.00
		79	F&I Class 5 Agg - 12" Thick	SY	27,000.00	0.00	27,000.00	-1,525.00	25,475.00	12.20	-18,605.00
		80	F&I Edge Drain 4" Dia PVC	LF	9,900.00	0.00	9,900.00	-1,305.80	8,594.20	6.40	-8,357.12
		81	F&I Curb & Gutter Mountable (Type I)	LF	425.00	0.00	425.00	-4.00	421.00	24.00	-96.00

**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Paving	82	F&I Curb & Gutter Standard (Type II)	LF	14,300.00	0.00	14,300.00	-300.00	14,000.00	20.50	-6,150.00
	83	Remove Curb & Gutter	LF	175.00	0.00	175.00	-31.60	143.40	5.00	-158.00
	84	F&I Pavement 10" Thick Doweled Conc	SY	20,200.00	0.00	20,200.00	-450.00	19,750.00	69.00	-31,050.00
	85	F&I Median Nose - Conc	SY	61.50	0.00	61.50	22.50	84.00	195.00	4,387.50
	87	F&I Sidewalk 4" Thick Reinf Conc	SY	1,200.00	0.00	1,200.00	-267.67	932.33	39.00	-10,439.13
	88	F&I Sidewalk 6" Thick Reinf Conc	SY	350.00	0.00	350.00	84.19	434.19	48.00	4,041.12
	89	F&I Sidewalk 5" Thick Reinf Conc	SY	9,000.00	0.00	9,000.00	-546.00	8,454.00	40.00	-21,840.00
	90	Remove Sidewalk All Thicknesses All Types	SY	15.00	0.00	15.00	15.00	30.00	12.00	180.00
	91	F&I Impressioned 5" Thick Reinf Conc	SY	1,000.00	0.00	1,000.00	40.91	1,040.91	78.00	3,190.98
	92	F&I Impressioned 8" Thick Reinf Conc	SY	500.00	0.00	500.00	-153.70	346.30	75.00	-11,527.50
	93	F&I Det Warn Panels Cast Iron	SF	500.00	0.00	500.00	-25.00	475.00	52.00	-1,300.00
	97	Mulching Type 1 - Hydro	SY	35,000.00	0.00	35,000.00	43,915.82	78,915.82	0.37	16,248.85
	98	Seeding Type B	SY	35,000.00	0.00	35,000.00	26,265.82	61,265.82	0.35	9,193.04
	99	Sediment Control Log 10" to 15" Dia	LF	2,500.00	0.00	2,500.00	-2,300.00	200.00	2.35	-5,405.00
	100	Inlet Protection - Existing Inlet	EA	6.00	0.00	6.00	-2.00	4.00	150.00	-300.00
	104	F&I Erosion Control Blanket Type 3	SY	6,410.00	0.00	6,410.00	-6,410.00	0.00	2.10	-13,461.00
	134	Topsoil - Strip	CY	1,810.00	0.00	1,810.00	1,810.00	3,620.00	5.00	9,050.00
	145	F&I Driveway 7" Thick Reinf Conc	SY	153.00	0.00	153.00	-8.70	144.30	85.80	-746.46
Paving Sub Total (\$)										-122,719.72
Signing	114	F&I Diamond Grade Cubed	SF	98.50	0.00	98.50	49.30	147.80	29.40	1,449.42
	115	F&I High Intensity Prismatic	SF	113.30	0.00	113.30	37.50	150.80	26.25	984.38
	116	F&I Sign Assembly	EA	8.00	0.00	8.00	-3.00	5.00	90.00	-270.00
	117	F&I Sign Assembly & Anchor	EA	31.00	0.00	31.00	10.00	41.00	90.00	900.00
Signing Sub Total (\$)										3,063.80
Pavement Markings	118	Paint Epoxy Message	SF	410.00	0.00	410.00	214.00	624.00	15.75	3,370.50
	119	F&I Grooved Plastic Film 8" Wide	LF	440.00	0.00	440.00	-165.00	275.00	11.70	-1,930.50
	120	F&I Grooved Contrast Film 7" Wide	LF	5,596.00	0.00	5,596.00	-651.00	4,945.00	12.40	-8,072.40

**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Pavement Markings	121	F&I Methacrylate 24" Wide	LF	440.00	0.00	440.00	-60.00	380.00	46.00	-2,760.00
	122	F&I Grooved Contrast Film 11" Wide	LF	100.00	0.00	100.00	109.00	209.00	18.50	2,016.50
Pavement Markings Sub Total (\$)										
Landscaping	124	Mulching Type 1 - Hydro	SY	10,000.00	0.00	10,000.00	-7,583.00	2,417.00	0.37	-2,805.71
	125	Seeding Type B	SY	10,000.00	0.00	10,000.00	-7,583.00	2,417.00	0.35	-2,654.05
	126	F&I Perf Tree Drain SDR 35 - 4" Dia PVC	LF	2,365.00	0.00	2,365.00	-421.05	1,943.95	10.00	-4,210.50
	128	F&I Bullet Edging	LF	2,550.00	0.00	2,550.00	-220.00	2,330.00	4.90	-1,078.00
	129	F&I Weed Barrier Geotextile	SY	1,000.00	0.00	1,000.00	-365.85	634.15	0.21	-76.83
Landscaping Sub Total (\$)										-10,825.09

Summary

Source Of Funding

Net Amount Change Order # 6 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

-235,270.67
461,545.83
6,095,877.39
6,322,152.54

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
10/09/2021		0.00	0.00	10/09/2021	

Description

APPROVED

APPROVED DATE

For Contractor
[Signature]

Department Head

Title
PRESIDENT

Mayor

[Signature] 3/2/22



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Attest



March 2, 2022

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. PR-22-E1

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, March 2, 2022, for Seal Coat, Improvement District No. PR-22-E1, located Citywide.

The bids were as follows:

Pearson Bros, Inc.	\$ 976,841.28
Asphalt Preservation Company Inc.	\$1,083,160.94
Asphalt Surface Technologies Corp.	\$1,164,057.64
Engineer's Estimate	\$ 881,012.90

The special assessment escrow is not required.

One protest was received amounting to less than 1% of the Improvement District. We recommend that the protests be declared insufficient and the contract be awarded to Pearson Bros, Inc. in the amount of \$976,841.28 as the lowest and best bid.

Sincerely,



Thomas Knakmuhs
Assistant City Engineer

TAK/jmg

ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # PR-22-E1

Seal Coat

City Wide

WHEREAS, bids have been opened and filed for the above described Improvement District for City of Fargo, North Dakota; and
 WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

Seal Coat Improvement District # PR-22-E1 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
Section 1					
1	Mobilization	LS	1.00	27,750.00	27,750.00
2	F&I Pavement Mix Wear Course Asph	Ton	10.00	500.00	5,000.00
3	F&I Seal Aggregate A	SY	82240.00	0.83	68,259.20
4	F&I Seal Aggregate B	SY	47501.00	0.83	39,425.83
5	F&I Seal Oil	Gal	39177.00	1.60	62,683.20
6	Paint Epoxy Line 4" Wide	LF	4357.00	2.90	12,635.30
7	Paint Epoxy Line 16" Wide	LF	25.00	23.00	575.00
8	Paint Epoxy Line 24" Wide	LF	138.00	27.50	3,795.00
9	Paint Epoxy Message	SF	2112.00	24.00	50,688.00
10	Traffic Control - Minor	LS	1.00	9,500.00	9,500.00
Section 1 Total					280,311.53
Section 2					
11	Mobilization	LS	1.00	9,500.00	9,500.00
12	F&I Pavement Mix Wear Course Asph	Ton	15.00	500.00	7,500.00
13	F&I Seal Aggregate A	SY	21356.00	0.83	17,725.48
14	F&I Seal Oil	Gal	5980.00	1.60	9,568.00
15	Traffic Control - Minor	LS	1.00	9,500.00	9,500.00
Section 2 Total					53,793.48
Section 3					
16	Mobilization	LS	1.00	11,600.00	11,600.00
17	F&I Pavement Mix Wear Course Asph	Ton	10.00	500.00	5,000.00
18	F&I Seal Aggregate A	SY	56224.00	0.83	46,665.92
19	F&I Seal Aggregate B	SY	5623.00	0.83	4,667.09
20	F&I Seal Oil	Gal	17654.00	1.60	28,246.40
21	Paint Epoxy Line 4" Wide	LF	908.00	2.90	2,633.20
22	Paint Epoxy Line 8" Wide	LF	363.00	5.80	2,105.40
23	Paint Epoxy Message	SF	80.00	24.00	1,920.00
24	Traffic Control - Minor	LS	1.00	9,500.00	9,500.00
Section 3 Total					112,338.01
Section 4					
25	Mobilization	LS	1.00	11,400.00	11,400.00
26	F&I Seal Aggregate B	SY	14294.00	0.83	11,864.02
27	F&I Seal Oil	Gal	4860.00	1.60	7,776.00
28	Paint Epoxy Line 4" Wide	LF	1090.00	2.90	3,161.00
29	Paint Epoxy Line 24" Wide	LF	90.00	27.50	2,475.00

30	Traffic Control - Minor	LS	1.00	9,500.00	9,500.00
				Section 4 Total	46,176.02
Section 5					
31	Mobilization	LS	1.00	9,500.00	9,500.00
32	F&I Seal Aggregate B	SY	7237.00	0.83	6,006.71
33	F&I Seal Oil	Gal	2606.00	1.60	4,169.60
34	Traffic Control - Minor	LS	1.00	9,500.00	9,500.00
				Section 5 Total	29,176.31
Section 6					
35	Mobilization	LS	1.00	11,250.00	11,250.00
36	F&I Pavement Mix Wear Course Asph	Ton	15.00	500.00	7,500.00
37	F&I Seal Aggregate A	SY	60822.00	0.83	50,482.26
38	F&I Seal Aggregate B	SY	12667.00	0.83	10,513.61
39	F&I Seal Oil	Gal	21591.00	1.60	34,545.60
40	Paint Epoxy Line 4" Wide	LF	642.00	2.90	1,861.80
41	Paint Epoxy Line 8" Wide	LF	200.00	5.80	1,160.00
42	Paint Epoxy Message	SF	118.00	24.00	2,832.00
43	Traffic Control - Minor	LS	1.00	9,500.00	9,500.00
				Section 6 Total	129,645.27
Section 7					
44	Mobilization	LS	1.00	11,400.00	11,400.00
45	F&I Seal Aggregate A	SY	20791.00	0.83	17,256.53
46	F&I Seal Aggregate B	SY	36888.00	0.83	30,617.04
47	F&I Seal Oil	Gal	17948.00	1.60	28,716.80
48	Paint Epoxy Line 4" Wide	LF	512.00	2.90	1,484.80
49	Paint Epoxy Line 8" Wide	LF	136.00	5.80	788.80
50	Paint Epoxy Line 16" Wide	LF	18.00	23.00	414.00
51	Paint Epoxy Line 24" Wide	LF	90.00	27.50	2,475.00
52	Paint Epoxy Message	SF	59.00	24.00	1,416.00
53	Traffic Control - Minor	LS	1.00	9,500.00	9,500.00
				Section 7 Total	104,068.97
Section 8					
54	Mobilization	LS	1.00	9,500.00	9,500.00
55	F&I Seal Aggregate A	SY	8054.00	0.83	6,684.82
56	F&I Seal Aggregate B	SY	1378.00	0.83	1,143.74
57	F&I Seal Oil	Gal	2590.00	1.60	4,144.00
58	Traffic Control - Minor	LS	1.00	9,500.00	9,500.00
				Section 8 Total	30,972.56
Section 9					
59	Mobilization	LS	1.00	10,700.00	10,700.00
60	F&I Seal Aggregate A	SY	17870.00	0.83	14,832.10
61	F&I Seal Aggregate B	SY	18071.00	0.83	14,998.93
62	F&I Seal Oil	Gal	10790.00	1.60	17,264.00
63	Paint Epoxy Line 24" Wide	LF	224.00	26.00	5,824.00
64	Traffic Control - Minor	LS	1.00	9,500.00	9,500.00
				Section 9 Total	73,119.03
Section 10					

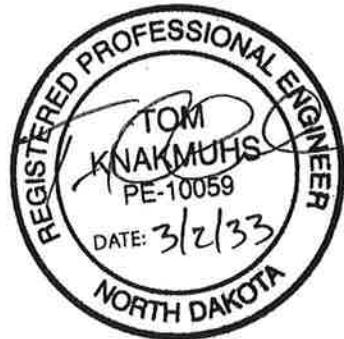
65 Mobilization	LS	1.00	14,600.00	14,600.00
66 F&I Seal Aggregate A	SY	37178.00	0.83	30,857.74
67 F&I Seal Aggregate B	SY	17512.00	0.83	14,534.96
68 F&I Seal Oil	Gal	15620.00	1.60	24,992.00
69 Paint Epoxy Line 4" Wide	LF	3512.00	2.90	10,184.80
70 Paint Epoxy Line 8" Wide	LF	132.00	5.80	765.60
71 Paint Epoxy Line 24" Wide	LF	150.00	27.50	4,125.00
72 Paint Epoxy Message	SF	320.00	24.00	7,680.00
73 Traffic Control - Minor	LS	1.00	9,500.00	9,500.00
Section 10 Total				117,240.10
Total Construction in \$				976,841.28

Engineering	10.00%	97,684.13
Legal & Misc	3.00%	29,305.24
Contingency	5.00%	48,842.06
Administration	4.00%	39,073.65
Interest	4.00%	39,073.65
Total Estimated Costs		1,230,820.01
Sales Tax - Fund 420		915,179.93
Special Assessments		315,640.08
Unfunded Costs		-

IN WITNESS THEREOF, I have hereunto set my hand and seal
Date: 3/2/2022



Tom Knakmuhs
Assistant City Engineer



306

March 2, 2022

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. PR-22-G1

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, March 2, 2022, for Asphalt Paving Rehab/Reconstruction, Improvement District No. PR-22-G1, located on 18th Avenue South from 42nd Street to 39th Street and on 40th Street South from 19th Avenue to 17th Avenue.

The bids were as follows:

Northern Improvement Co.	\$ 1,195,835.00
Border States Paving, Inc.	\$ 1,254,958.40
Central Specialties, Inc.	\$ 1,451,930.00
FM Asphalt, LLC	\$ 1,468,704.00
Engineer's Estimate	\$ 1,400,000.00

The special assessment escrow is not required.

This office recommends award of the contract to Northern Improvement Co. in the amount of \$1,195,835.00 as the lowest and best bid. No protests have been received.

Sincerely,



Thomas Knakmuhs
Assistant City Engineer

TAK/klb

ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # PR-22-G1

Asphalt Paving Rehab/Reconstruction

On 18th Avenue South from 42nd Street to 39th Street and on 40th Street South from 19th Avenue to 17th Avenue.

WHEREAS, bids have been opened and filed for the above described Improvement District for City of Fargo, North Dakota; and
WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

Asphalt Paving Rehab/Reconstruction Improvement District # PR-22-G1 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
Paving					
1	Remove Pavement All Thicknesses All Types	SY	12100.00	4.15	50,215.00
2	Remove Curb & Gutter	LF	6700.00	3.50	23,450.00
3	Remove Driveway All Thicknesses All Types	SY	750.00	11.50	8,625.00
4	Remove Sidewalk All Thicknesses All Types	SY	250.00	15.50	3,875.00
5	Rem & Repl Casting - Std Manhole	EA	1.00	700.00	700.00
6	Rem & Repl Casting - Self Leveling	EA	5.00	1,600.00	8,000.00
7	Rem & Repl Casting - Inlet	EA	14.00	885.00	12,390.00
8	F&I Flat MH Cover 8" Thick Reinf Conc	EA	2.00	1,700.00	3,400.00
9	F&I Repair Band 4" thru 12" Dia	EA	2.00	2,400.00	4,800.00
10	Subgrade Preparation	SY	14700.00	5.00	73,500.00
11	F&I Woven Geotextile	SY	14700.00	1.55	22,785.00
12	Connect Pipe to Exist Structure	EA	20.00	180.00	3,600.00
13	F&I Edge Drain 4" Dia PVC	LF	6700.00	10.00	67,000.00
14	F&I Class 5 Agg - 8" Thick	SY	14700.00	8.75	128,625.00
15	F&I Curb & Gutter Standard (Type II)	LF	6700.00	17.75	118,925.00
16	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	6300.00	79.35	499,905.00
17	F&I Sidewalk 4" Thick Reinf Conc	SY	200.00	75.00	15,000.00
18	F&I Sidewalk 6" Thick Reinf Conc	SY	50.00	85.00	4,250.00
19	F&I Driveway 7" Thick Reinf Conc	SY	750.00	75.50	56,625.00
20	F&I Det Warn Panels Cast Iron	SF	144.00	40.00	5,760.00
21	Casting to Grade - no Conc	EA	19.00	600.00	11,400.00
22	Boulevard Grading	SY	2600.00	5.50	14,300.00
23	Seeding Type C	SY	2600.00	4.75	12,350.00
24	Mulching Type 1 Hydro	SY	2600.00	4.25	11,050.00
25	Stormwater Management	LS	1.00	4,530.00	4,530.00
26	Inlet Protection - Existing Inlet	EA	14.00	160.00	2,240.00
27	Temp Construction Entrance	EA	4.00	1,000.00	4,000.00
28	Traffic Control - Type 1	LS	1.00	18,535.00	18,535.00
29	F&I Traffic Surface Gravel	Ton	100.00	60.00	6,000.00
Paving Total					1,195,835.00
Total Construction in \$					1,195,835.00
Engineering				10.00%	119,583.50
Legal & Misc				3.00%	35,875.05
Contingency				5.00%	59,791.75
Administration				4.00%	47,833.40
Interest				4.00%	47,833.40

Total Estimated Costs	1,506,752.10
Sales Tax - Fund 420	234,577.92
Special Assessments	1,272,174.18
Unfunded Costs	-

IN WITNESS THEREOF, I have hereunto set my hand and seal
Date: 3/2/2022



Tom Knakmuhs
Assistant City Engineer

